IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22355 of 2019

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Sheo Kumar Mishra @ Shiv Kumar Mishra S/o Late Ramavatar Mishra R/o Mishra Saravali, Ashirvad Colony, P.S.- Shashtri Nagar, Patna, Bihar-800025

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. The Principal Secretary Department of Education, Govt. of Bihar, Patna
3. The Director (Administration)-cum-Joint Secretary Department of Education, Govt. of Bihar, Patna
4. The Director (Higher Education) Department of Education, Govt. of Bihar, Patna
5. Research Institute of Prakrit Jainology and Ahimsa, Vaishali-844128, through the Director
6. The Director Research Institute of Prakrit, Jainology and Ahimsa, Vaishali-844128
7. The Accountant General Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nikhil Kumar Agrawal, Adv.

For the Respondent/s : Mr.Jitendra Kumar Roy 1 (SC-13)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

9 05-11-2020 Following are the reliefs which the petitioner is seeking in the present writ application :-

> *"(i) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to revise the pension payable to the petitioner w.e.f. 01.04.2017 in view of revision made w.e.f. 01.02.2009.*
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> *(ii) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to*

forthwith pay up-to-date statutory interest on the delayed payment of gratuity from the date of retirement till the date of payment in terms of Section 7(3A) of Payment of Gratuity Act, 1972;

(iii) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to forthwith release an amount of Rs. 79,612/- which has been wrongly withheld by the respondent authorities from the difference of salary and allowance payable to the petitioner in the light of the ACP I and ACP II granted to the petitioner along with up-to-date interest @ 18% till the date of actual payment;

(iv) To issue an appropriate order/ direction in the nature of Mandamus directing the respondents to forthwith release the arrears of difference of salary payable to the petitioner in view of the enhancement of pay pursuant to the 8th pay revision along with up-to-date interest @ 18% till the date of actual payment;

(v) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to issue a no-dues certificate to the petitioner and thereafter refund the amount of Rs. 10000/- deducted from the gratuity paid along with up-to-date interest @ 18% till the date of actual payment;

(vi) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to give complete accounts of the post-retiral

benefits receivable by the petitioner;

(vii) To issue an appropriate order/ direction in the nature of mandamus directing the respondents to pay interest to the petitioner at the rate of 18% from the date the benefits became payable till the actual date of payment;"

2. There is no dispute that the petitioner retired on 31.01.2009 from the post of Lecturer, Research Institute of Prakrit Jainology and Ahimsa, Vaishali which is under the Education Department of the Government of Bihar. The petitioner's claim that the said post is under Bihar Education Service has not been disputed in the counter affidavit filed on behalf of the State of Bihar. The respondents have not disputed that the amount of gratuity, which the petitioner was entitled to receive on the date of his superannuation under the Bihar Pension Rules, 1950 had not been paid to him. The reason, which has been assigned in the counter affidavit for non-payment of gratuity amount, is that a sum of Rs. 44,379=00 was due to the petitioner and no dues certificate was not submitted in respect of the said amount. It has, however, been stated that the matter has been considered now and the Director (Administration), Education Department vide letter No. 1001 dated 25.06.2019 has sanctioned for payment of gratuity amount and has requested the Accountant General,

Bihar for issuance of authority letter for payment of the same amount after deducting the said amount of Rs. 44,379=00. It has further been stated that payment order in respect of payment of gratuity has been issued by the Accountant General, Bihar, Patna.

3. In respect of payment of arrears of salary for the period April 2007 to January 2009 on account of 6th pay revision it has been stated that the same has now been calculated and a sum of Rs. 1,71,660=00(one lakh seventy-one thousand six hundred and sixty only) has been found payable. Accordingly the Institute vide its letter No. 604 dated 04.09.2020 has sanctioned payment of the said amount of Rs. 1,71,660=00 and the Treasury Officer, Muzaffarpur has been requested to make payment of the said amount. The difference of the amount of cash equivalent to unutilized earned leave arising out of revision of pay with effect from 01.04.2007 to the tune of Rs. 76610=00 has been admitted and it has been stated that the said amount has also been sanctioned for payment in favour of the petitioner. According to counter affidavit, payment of difference of salary and the amount of leave encashment is in process and the same shall be paid to him soon.

4. On the basis of what has been asserted in the counter affidavit, it transpires that the claim of the petitioner, as raised in the writ application for payment of gratuity, arrears of salary and the amount of leave encashment has been substantially redressed, relevant aspects of which have been taken note of hereinabove.

5. Mr. Nikhil Agrawal, learned counsel appearing on behalf of the petitioner has, however, submitted that there has been inordinate delay of more than ten years in making payment of amounts against various heads, which the petitioner was legally entitled to receive long ago. He has contended that the petitioner is entitled for interest on the amount of gratuity in view of specific provision under Section 7(3-A) of the Payment of Gratuity Act, 1972. He has submitted that in terms of sub-section-(3) of Section 7 of the said Act the amount of gratuity was required to be paid within 30 days from the date it became payable to the petitioner. He contends that the amount of gratuity had become payable immediately after the petitioner retired in 2009.

6. Learned counsel representing the State of Bihar, on the other hand, has argued that as the petitioner had failed to submit no dues certificate and since a sum of Rs. 44,379=00

was due on the petitioner, the amount of gratuity was rightly withheld, awaiting submission of no dues certificate. He has argued that the petitioner himself is responsible for delay in payment of the amount of gratuity.

7. Upon consideration of rival submissions advanced on behalf of the parties, in my opinion, the Payment of Gratuity Act, 1972 shall have no application in the facts and circumstances of the present case, as, admittedly, the petitioner was an employee under the Education Department, Government of Bihar. The payment of pension and gratuity in this case are governed by the Bihar Pension Rules, which is, admittedly more favourable than the benefits covered under the said Act. Therefore, question of awarding interest as prescribed under the Gratuity Act does not arise as the said provision cannot be invoked in petitioner's case. However, non-application of provisions of the Gratuity Act does not deter this Court from awarding appropriate interest on the amount of gratuity which remained due for nearly a decade. The justification put forth by the respondents that a sum of Rs. 44,379=00 was recoverable from the petitioner, and, therefore, the amount of gratuity was not paid to him is not acceptable to this Court. What the Respondents State have done by

sanctioning the amount of gratuity in 2019, could have been done in 2009 when he retired. Further, the amount of gratuity could not have been withheld unilaterally, without following the procedure prescribed under the Bihar Pension Rules, 1950. It is accordingly, directed that the petitioner shall be paid simple interest @ 8% *per annum* on the amount of gratuity, which has been sanctioned, to be calculated from the date the same became due till the date of its actual payment. The amount of interest shall have to be determined by Respondent No. 3, who shall ensure passing of necessary sanction order for payment to the petitioner of the said amount within three months from the date of receipt/ production of a copy of this order.

8. It is made clear that the amount of interest must be paid within three months from the date of receipt of a copy of this order. The respondents are directed to ensure that all other dues, which have been admitted in the counter affidavit are paid to the petitioner within one month from the date of receipt/ production of a copy of this order, if not already paid.

9. As regards the claim on behalf of the State of Bihar that a sum of Rs. 44,379=00 was recoverable from the petitioner, since the Court is of the opinion that the petitioner's

admitted dues remained pending for several years and he was never put to notice for recovery of the said amount, it is directed that the said amount shall not be adjusted against any head.

10. This application stands allowed with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J)

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