

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.520 of 2020**

Sarojendra Kumar Son of T.N. Sinha Resident of Mohalla- A/247 P.C.
Colony, Kankarbagh, Patna-20.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Superintendent of Police, Nalanda.
6. The Treasury Officer, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Mrityunjay Kumar, Advocate
For the Respondent/s : Mr.Md.N.H.Khan (Sc1)

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

8 22-09-2020 Having retired from service from the post of Deputy Superintendent of Police in the year 2014 at the age of 60 years, the petitioner has been compelled to move this Court in its writ jurisdiction for getting his one of the post retiral dues namely, the encashment of unutilized leave of 300 days. He waited for six years almost before knocking the door of this Court. Prior to filing of the present writ application, he made representations to the competent authority vide Annexure '3' to the writ application. Vide Annexure '4' to the writ application, the Inspector General of Police (Head office) Bihar called upon the Superintendent of Police, Nalanda to send the proposal for payment of leave encashment benefit to the petitioner together with no dues certificate.

For almost two years when no action was taken pursuant to Annexure '4' to the writ application, the petitioner had no option but to



seek his remedy before this Court. His attempt to get his grievance redressed through the Public Grievance Redressal Forum of the Department of Home Government of Bihar which had a duty to look into the grievance of the retired employees did not yield any result.

The counter affidavit filed on behalf of respondent no. 5 is totally silent and in fact no explanation at all has been offered to explain the delay with any cogent reason.

Let it be recorded that having noticed the kind of delay and laches on the part of the respondents in not making payment of the leave encashment benefit of the petitioner, this Court passed order dated 24.06.2020 which is extracted hereunder for a ready reference:-

“3 24.06.2020- The petitioner who retired from service in the year 2014 as Dy.S.P. is still looking for receipt of his unutilised leave encashment amount for 300 days. The records show that he has been running from pillar to post and his attempt to get his grievance redressed through the Departmental Public Grievance Redressal Officer in the office of Department of Home, Government of Bihar has also failed to give positive result. Annexure ‘5’ series are the various orders passed by the Departmental Public Grievance Redressal Officer.

A counter affidavit filed on behalf of Accountant General, Bihar states that encashment in lieu of earned leave is to be authorised by the Entitlement Cell of Finance Department, Government of Bihar.

As prayed by learned counsel for the State, let this matter be listed after two weeks i.e. on 13th July, 2020 to enable the State to come out with specific affidavit from the competent authority of the Entitlement Cell of the Finance Department, Government of Bihar, Patna as to why the leave encashment amount has not been paid to the petitioner for last 6 years and in case the delay has taken place because of the laches in the office of Entitlement Cell then why the Court should not award adequate interest to the petitioner which should be realized from the erring officials of Entitlement Cell of the Finance Department. The affidavit must address all the issues.

Pendency of this application shall, however, not be a ground for further delaying the payment of leave



encashment.

List accordingly.”

Again finding no satisfactory reply coming from the respondents, this Court passed the order dated 13.07.2020 and the same is also being reproduced hereunder:-

“4 13-07-2020 This matter relates to payment of post-retiral dues of a government employee who retired from service as Deputy Superintendent of Police in the year 2014. It is his case that for last six years he is running from pillar to post for getting all the benefits on account of his retirement but it is his grievance that he has not been paid the encashment of earned leave of 300 days.

Although the writ application was filed after serving two copies on the State but no counter affidavit was filed. This matter was seen on the list for the first time on 13th January, 2020 no doubt for removal of the defect but it was definitely a signal to the State to take care of the case. The Government has a litigation policy which provides for filing of counter within prescribed period.

During pandemic period this matter was again listed on 24th June, 2020. This Court recorded the grievance of the petitioner, his complaint that that he is running from pillar to post in attempt to get his grievance redressed and his attempt to get his grievance redressed through the Public Grievance Redressal officer in the office of the Department of Home, Government of Bihar had failed to give positive result.

In the aforesaid view of the matter, taking note of the statements made in the counter affidavit of the Accountant General, Bihar saying that encasement in lieu of the earned leave is to be authorized by the Entitlement Cell of the Finance Department, Government of Bihar, this Court granted two weeks time to learned counsel for the State to enable him to come with specific affidavit from the competent authority of the Entitlement Cell, Finance Department, Government of Bihar, Patna as to why the leave encasement amount has not been paid to the petitioner for last six years and in case the delay has taken place because of laches in the office of the Entitlement Cell, then why the Court should not award adequate interest to the petitioner which should be realized from the erring officials of the Entitlement Cell of the Finance Department.

Today when the matter has been called out, learned counsel for the respondent State prays for another four weeks time. There is no cogent reason before this Court



to grant a long adjournment in the nature prayed for. This Court is rather of the view that the concerned Department of the Government has miserably failed to appreciate the hardship of the petitioner particularly when the petitioner has earlier approached the Public Grievance Redressal Forum in the Department of Home.

In the aforesaid view of the matter, this Court has no option but to call upon the Principal Secretary, Department of Finance, Government of Bihar to appear before this Court in the virtual court proceeding day after tomorrow to explain the matter.

The Bench Officer as well as learned counsel for the State shall send the link to the Principal Secretary, Department of Finance, Government of Bihar so that he can connect with the virtual court proceeding day after tomorrow.

List this matter on 15th July, 2020.”

Pursuant to the aforesaid order the Principal Secretary, Finance Department, Government of Bihar appeared in virtual Court proceeding and took a fair and categorical stand that there has been a delay in payment of post retiral dues of the petitioner for which he will not defend the State on this issue. This Court then passed the order dated 17.07.2020 in the following terms:-

“6 17-07-2020 Pursuant to the last order Mr. S. Siddharth, the Principle Secretary, Department of Finance, Government of Bihar has personally appeared and addressed this Court.

At the outset, the Principle Secretary, Finance, informs this Court that in fact there was no delay on the part of the Entitlement Cell of the Finance Department in this matter. The Department received administrative order/request for issuance of authority slip only in the month of June 2020 from the Home Department. The payment has been made thereafter within a month.

Mr. Siddharth has taken a very fair stand and the Court must appreciate it. Mr. Siddharth has made categorical statement that there has been a delay in payment of post retiral dues to this petitioner and he will not defend the State on this issue of the delay. He has submitted that he has not inquired into the matter as to who is responsible for the delay but one thing is very clear that it is the Home Department where the delay has taken place and the said Department may look into this issue and apprise



this Court.

This Court accepts his statement. So far as the Department of Finance is concerned, now nothing remains for the Department at this stage and there would be no need of appearance of the Principle Secretary on the next date.

Mr. N.H. Khan, learned SC-1 representing the State submits that he will discuss the matter with the competent authority in the Home Department and will apprise this Court as to where the delay has taken place and who are responsible for the same.

This Court has made it clear to learned SC-1 for the State that given the kind of harassment the petitioner has suffered in getting his post retiral dues for last six years, this Court is willing to award some interest to the petitioner and cost of litigation but at the same time the Court will take a view that the State if saddled with cost and the public money on account of interest and cost are being paid to a litigant for the inaction on the part of its' executive then, whosoever is responsible for the delay will be responsible to compensate the State to the extent the amount which the State may be held liable to pay the petitioner.

Let this matter be listed after two weeks i.e. on 3rd August, 2020 to enable the Home Department to look into the matter and apprise this Court with regard to the inquiry held by them in this matter.

This Court has been reported that Mr. Ram Yash Singh, learned counsel for the Accountant General, Bihar has telephonically conveyed his presence and has also informed that because of some technical glitches he is unable to connect. Let him be treated as present.

List accordingly.”

Now the Under Secretary, Department of Home, Government of Bihar has filed a counter affidavit on behalf of respondent no. 1 in which it is inter alia stated that the reason for delay in sending the proposal for payment of encashment of earned leave benefit to the petitioner have been examined and two employees posted in the office of the Superintendent of Police, Nalanda have been identified as responsible for such delay. A departmental proceeding has been initiated against them.

This case is a mind opening litigation for the State. This Court



is finding that the delay in sending the proposal for payment of leave encashment benefits to the petitioner has to be taken very seriously. It is not only a case of harassment to the petitioner at the evening of his life but it is also a violation of a constitutional right of a retired employee to receive his post retiral benefits which are in the nature of a property of the said employee. When such deprivation to a retired employee comes because of the inaction on the part of the employees of the State who has been given the responsibilities to perform acts on behalf of the State, it is a disturbing feature and must be taken seriously. The deprivation is such that it requires imposition of cost and award of interest in favour of the petitioner which the State is liable to pay, in the opinion of this Court such interest and cost are required to be recovered from the erring officials.

In this connection, this Court has dealt with the settled principles of law citing Hon'ble Apex Court judgment in one of its decisions rendered in the case of **K. K. Pathak Vs. Ravi Shankar Prasad & Ors.** reported in **2019(1) PLJR 1051**. The judgment was though challenged before the Hon'ble Apex Court in Special Leave to Appeal Criminal) Nos. 003566/2019 and the Hon'ble Apex Court refused to interfere with the same. This Court finds that the said principle would be applicable in the facts of the present case.

The petitioner has made out a case for awarding of interest and cost of litigation. Accordingly, this Court directs the State respondents to pay interest at the rate of 6% per annum on the amount of leave encashment benefit payable to the petitioner together with cost of litigation assessed at Rs. 25,000/- (twenty five thousand). The interest would be calculated from the date three months after the retirement of the petitioner till the date of payment. The entire payment shall be made within a period of 30 days from the date of receipt/production of a copy of this order.



In view of the discussions made hereinabove, the State would be at liberty to realize the interest and cost amount from the erring officials in accordance with law.

The writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

