IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16454 of 2017

==

Sadanand Choudhary Son of Late Kant Lal Choudhary, Resident of Village-Gaurupur, Police Station- Bihpur, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director (Administration) cum Deputy Secretary, Department of Education, Government of Bihar, Patna
3. The Additional Secretary, Department of Education, Government of Bihar, Patna.
4. The District Education Officer, Saran, Chapra.
5. The Sub Divisional Education Officer, Chapra South, District- Chapra.
6. The Director, General Provident Fund, New Secretariat, Patna.
7. The District Provident Fund Officer, Saran, Chapra.
8. The Treasury Officer, Saran, Chapra.
9. The Accountant General, Bihar, Patna, Veerchand Patel Marg, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Sr. Adv.
		Mr. Kundan Kumar Sinha, Adv.
		Mr. Satendra Narayan Singh, Adv.
For the State	:	Mr. Jitendra Kumar Roy No-1, SC13
For the Accountant General:		Mr. Vivekanand Kunwar, Adv.

==

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 12-01-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conferencing.

The petitioner has filed the instant writ application for direction to the respondents-State for releasing the following retiral benefits to the petitioner:-

"(a) The amount under General Provident Fund.

(b) The amount under heading of earns leave.
(c) Gratuity.
(d) Amount under Group Insurance head.
(e) Arrears of salary for the month of June 2003 (the month of retirement)."

The petitioner has further prayed that an appropriate direction be issued to the respondents for payment of pensionary amount with effect from July, 2003 and since the petitioner has not been paid the amount mentioned above for more than 14 years after superannuation, he be compensated by way of penal interest on all the arrears of retiral benefits.

The case of the petitioner in brief is that after attaining age of superannuation, he retired on 30.6.2003 from the post of Sub-Divisional Educational Officer, Chapra (South). While in service when the petitioner was posted as Project Officer, Falka, Katihar in the yer 1993 his service book was sent by the office of the District Education Officer, Katihar to the Secretariat for necessary entries. The service book of the petitioner could not be traced thereafter. The petitioner on his retirement on 30.6.2003 handed over charge of his office to the new incumbent. He tried his level best to submit his pension papers but the same was not accepted in absence of the service book which the respondents had misplaced. In the meantime, the petitioner's wife suffered a serious brain stroke in the month of June, 2003, became paralysed as a result of the same and passed away on 20.9.2009. The petitioner thereafter continue to pursue the respondent authorities, however, as his service book was neither available in the department nor in the local office at Chapra, the department was not ready to accept any application for fixation of pension or other retiral dues. It is submitted that unfortunately, the petitioner himself met with an accident and was bedridden for a considerable period.

It is the submission of learned counsel for the petitioner that in terms of the provisions of the Bihar Pension Rules, the respondents are duty bound to sanction and grant pension and other retiral benefits to the employee on the basis of the last 10 months salary. Not having received pension or other retiral benefits, the petitioner filed the instant writ application for the reliefs as stated above.

Counter affidavits have been filed on behalf of the Director, (Administration)-cum- Deputy Secretary, Department of Education (respondent no.2), on behalf of District Education Officer, Saran, Chapra (respondent no.4) and on behalf of the Director General, Provident Fund, New Secretariat, Patna and District Provident Fund Officer, Saran, Chapra, respondent nos.

6 and 7.

The substance of the stand of the respondents in their counter affidavits are that although the petitioner handed over charge of his post on his retirement to his incumbent, however, he did not submit his pension papers after retirement for fixation of his retirement benefits and thus the delay. However, in the counter affidavit filed on behalf of the District Education Officer, Saran, Chapra (respondent no.4), statement with respect to the service book of the petitioner was made in paragraph nos. 5, 6 and 7 which are quoted hereinbelow for ready reference:-

> *"5. That it is humbly submitted and stated that vide letter no.780 dated 22.10.2018 issued by District Education Officer, Saran, the details verified register of payment of salary of instant petitioner has been sought from the District Education Officer, Katihar/ Purnia/ Munger/ Bhagalpur/ Nawada/ Shekhpura so that second service Book may be reconstructed.*
>
> *6. That it is humbly submitted and stated that after receiving of such details, the second service book of instant petitioner will be reconstructed and thereafter all the remaining retiral benefits of instant petitioner will be paid.*
>
> *7. That it is humbly submitted and stated that vide letter no.872 dated 19.11.2018 the*

District Programme Officer (Estb.) Saran at Chapra has requested Director (Administration) Cum-Additional Secretary, Education Department, Bihar, Patna for issued of direction to his own level to the concerned aforesaid District Education Officer for providing details for reconstructing second service book of instant petitioner.

A photostate copy of letter No.872 dated 19.11.2018 is being annexed herewith and marked as Annexure- A"

8. That in view of the aforesaid facts and circumstances, it is, humbly submitted that the deponent may kindly be granted reasonable time so that second service book may be reconstructed and final pension of the petitioner may be fixed and all remaining retiral benefits of instant petitioner will be paid."

The payment of post retiral dues made to the petitioner by the respondent authorities have been brought on record in a chart form in paragraph no.3 of the second supplementary counter affidavit filed on behalf of the District Education Officer, Saran, Chapra (respondent no.4) and the same is being reproduced hereinbelow for ready reference.

> *"3. That pursuant to order dated 29.9.2020 passed by this Hon'ble Court, the present supplementary counter affidavit is being filed showing the details payment to the petitioner which are as follows:-*

		Amount paid
(a) G.P.F. amount (First authority) *Second Authority dated 16.06.2020*	*Bill No.172/2018-19* *Bill No. EST/GPF-944 dated 6.9.2020*	*Rs.7,12,435/-* *Rs.1,37,208/-*
	Total	*Rs.8,49,643/-*
(b) Provisional Pension *(i) From July, 2003 to September, 2018* *(ii) October, 2018 to June 2018*	*Bill No.160/2018-19* *Bill NO.EST 909 dated 2.9.2020*	*Rs.12,77,706/-* *Rs. 2,38,623/-*
	Total	*Rs.15,16,329/-*
(c) Provisional Gratuity	*Bill No.161/2018-19*	*Rs.2,30,398/-*
(d) Leave Encashment	*Bill No. EST/EL-960 dated 10.09.2020*	*Rs.1,24,120/-*
(e) Group Insurance	*Bill No.159/2018-19*	*Rs.3,787/-*

Referring to the averments made in the different counter affidavits filed on behalf of the respondents, it is submitted by learned counsel appearing for the respondents that it was on account of the petitioner not submitting his pension papers that the post retiral dues of the petitioner could not be paid in time.

It is further submitted that service book of the petitioner had also been misplaced which was also one reason for non-payment of the post retiral dues.

Having heard learned counsel for the parties and on considering the submissions made by the respective counsels it transpires that the petitioner retired as Sub-Divisional Educational Officer, Chapra on 30.6.2003. From the chart giving details of the payment of the post retiral dues to the petitioner it would transpire that the amount under the head of G.P.F., provisional pension, gratuity and Group Insurance have all been paid by different bills in 2018-19 while part of the G.P.F., provisional pension and leave encashment has been paid in September, 2020 i.e nearly 3 years after filing of the instant writ application. Thus in the facts and circumstances of the case and on perusal of the records it is clearly evident that there has been inordinate delay of more than 15 years in payment of post retiral dues.

In the facts and circumstances of the case, in the opinion of the Court, the petitioner is entitled for interest on the delayed payment of post retiral dues.

Learned Senior Counsel appearing for the petitioner relies on the judgment of this Court in the case of

Shyam Sunder Prasad versus State of Bihar and Ors. reported in **2017(1)PLJR 906**. paragraphs 12, 13, 14, 15, 16, 17 and 18 of the said judgment are being quoted hereinbelow for ready reference.

> *"12. In* ***State of Kerala and Others vs. M. Padmanabhan Nair,*** *[(1985) 1 SCC 429][:1985 PLJR (SC)17], the Supreme Court held that pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement, but have become valuable rights and property in their hands and any culpable delay in settlement and disbursement of post retiral dues must be visited with the penalty of interest at the current market rate till the date of its actual payment.*
>
> *13. Regarding delayed payment of pension and payment of interest the Supreme Court in* ***Union of India vs. Justice S.S. Sandhawalia****, [(1994)2 SCC 240][:1994(2)PLJR(SC)48] held:*
>
> > *"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-*

retirement gratuity which was delayed by almost a year."

14. In ***S.K. Dua vs. State of Haryana and Another*** *[(2008) 3 SCC 44] [:2008(2)PLJR(SC)128], the Supreme Court held:*

"If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof."

15. In ***H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.****,[(2003) 3 SCC 40],the Supreme Court held that if there was a delay in not releasing post retiral benefits, it was mandatory of the court to award interest.*

16. The pension or gratuity being no longer *bounty, the Supreme Court crystalised the payment of interest for delayed payment as a normal practice in* ***O.P. Gupta vs. Union of India& Others****, [(1987) 4 SCC 328] in the following words:*

> *"Normally, this court, as a settled practice, has been making direction for payment of interest at 12 percent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."*

17. On conclusion and upon perusal of the legal principles and the ratio laid down by the Supreme Court in the decisions cited hereinabove, in the opinion of this Court since the amounts of leave encashment, group insurance and provident fund have been paid to the petitioner after a period of over six years for no fault on his part, the respondents are liable to pay interest over the amount.

18. It is known to all that the rate of interest on deposits has substantially been reduced since 1987. In that view of the matter, I direct the respondents no.4 and 7 to pay interest at the rate of eight per cent per annum to the petitioner in respect of belated payment of leave encashment, group insurance and provident fund from the date they became due till the date of their actual payment within three months from the date of *receipt/production of a copy of this order failing which the respondents will have to pay interest at the rate of ten per cent with cost of rupees fifty thousand."*

In the facts of the instant case, the Court directs the respondent nos. 2 to 7 to pay interest at the rate of 8% per annum from the date of retirement till the date of actual payment to the petitioner on account of late payment of the post retiral dues under the head of Provident Fund, arrears of pension, gratuity, leave encashment and group insurance. The payment shall be made within a period of 3 months from the date of receipt of a copy of this order, failing which the respondents will also pay cost of Rs. 25,000/- to the petitioner.

The writ application stands disposed of with the aforesaid observations and directions.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	
Uploading Date	13.01.2021
Transmission Date	