

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6936 of 2018

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Damodar Sinha son of Lat Mahabir Sinha, Resident of New Kunj Colony, Bahadurpur, P.S. Bahadurpur, District- Patna.

... .. Petitioner

Versus

1. The Bihar State Power Holding Company Ltd. Vidyut Bhawan, Bailey Road, Patna through its Chairman-cum-Managing Director.
2. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
4. The Additional Secretary, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
5. The Joint Secretary, Bihar State Power Holding Company Ltd, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Arjun Kumar, Advocate
For the Respondent/s : Mr.Ranjit Sinha, Assistant Standing Counsel

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-02-2021

Heard learned counsel for the petitioner and learned counsel representing the Bihar State Power Holding Company Limited (hereinafter referred to as the 'BSPHCL') and it's authorities (hereinafter referred to as the 'Respondents').

Petitioner in this case is seeking quashing of the order passed by Chairman-cum-Managing Director of the 'BSPHCL' by which he has rejected the representation of the petitioner and refused to release the gratuity and leave



encashment of the petitioner. A writ in the nature of mandamus has also been sought for directing the respondents to release the gratuity and leave encashment amount in favour of the petitioner.

Learned counsel for the petitioner submits that during pendency of the writ application the gratuity amount has already been released, therefore the relief is now restricted to the entitlement of the petitioner as regards the leave encashment amount and payability of statutory interest for the delayed period of payment of gratuity. The grievance of the petitioner is that the respondents have not paid any interest for the delayed payment.

The facts in brief are as under:-

(1) The petitioner retired from service as Chief Engineer on 31.03.2004. While he was posted as Chief Engineer in the Dehri-on-Sone Electrical Circle, a First Information Report giving rise to Vigilance Case No. 02 of 2002 was instituted wherein several persons including the petitioner has been made accused. There was an allegation that one crusher owner was engaged in electricity theft and the employees of the erstwhile electricity board were made accused alleging that they had conspired with the said crusher owner.



(2) After retirement when the petitioner was denied his retiral benefits he filed a petition bearing CWJC No. 8781/2008 which was disposed off with a direction to the competent authority to take a decision for release of the gratuity and leave encashment. It is in the light of the said order that the petitioner represented before the respondent authorities. The said representation has been rejected vide letter no. 554 dated 09.07.2015 (Annexure '3' to the writ application).

Learned counsel for the petitioner submits that on perusal of the Annexure '3' it would appear that the Chairman-cum-Managing Director of the respondent no. 1 has rejected the representation of the petitioner taking a view that he was facing a charge on the date of his retirement. In the same order, it has come that in the case of Sri Saryu Prasad Singh, who, according to the petitioner, was similarly situated as an accused in the said Vigilance Case the respondents had sanctioned his leave encashment amount but then his case has been distinguished saying that on the date of retirement of Sri Saryu Prasad Singh i.e. 30.11.2001 the charge-sheet was not filed against him and the same came to be filed only on 02.07.2002.

Learned counsel submits that at this stage the



respondents have brought on record the standing order no. 1/Pension-EEB-4244/97 784/Dated, the 21.08.97 and a reading of the same would show that it talks of those employees/officers who were facing 'charges' on the date of their superannuation. It nowhere mentions about the pendency of a criminal proceeding or filing of a charge-sheet being a ground of withholding of the leave encashment.

It is submitted that admittedly in the case of the petitioner as also in the case of Sri Saryu Prasad Singh no departmental proceeding has been initiated as neither the petitioner nor said Sri Saryu Prasad Singh was served with any memo of charge. In his submissions, the standing order dated 21.08.1997 (Annexure 'B' to the supplementary counter affidavit of the respondents) would be applicable only when the employee is facing a charge in a departmental proceeding on the date of his superannuation.

Learned counsel further submits that on the date of retirement of this petitioner there was no standing order allowing withholdment of the leave encashment benefit of a retired employee who is facing a criminal case. It is pointed out that a criminal case against the petitioner is pending since the year 2002, and even at this stage, there is no chance of early conclusion of the trial. Almost 20 years have gone past institution of vigilance case.



Learned counsel further points out from Annexure 'A' to the supplementary counter affidavit filed on behalf of the respondents that the standing order relating to withholdment of leave encashment benefit has been modified vide memo no. 1167 dated 17.12.2004 i.e. after the retirement of the petitioner. The said modification was necessitated in view of the court cases faced by the board and upon deliberation the board modified the standing order by including the departmental as well as criminal proceeding against any employee/officer of the board as a ground for withholdment. Learned counsel submits that so far as the modified standing order dated 17.12.2004 (Annexure 'A' to the Supplementary counter affidavit) is concerned, the same would not be applicable in respect of the petitioner.

Mr. Ranjit Sinha, learned counsel representing the respondents submits that earlier the petitioner has been paid all his retiral benefits save and except the leave encashment amount. Reliance was placed on the standing order dated 21.08.1997 but very soon Mr. Sinha, learned counsel, has accepted the legal position as regards applicability of the modified standing order which came into effect few months after retirement of this petitioner. Realizing that the Annexure 'A' to the supplementary counter affidavit has included the pendency of the criminal proceeding as a ground for



withholdment of the leave encashment benefit to a retired employee only with effect from 17.12.2004 when the standing order was modified and the modified order came into effect, Mr. Sinha agrees to the extent that so far as Annexure 'A' dated 17.12.2004 is concerned, it would not be applicable in case of the petitioner.

Learned counsel for the respondents submits that the gratuity amount has been paid with statutory interest.

Having heard learned counsel for the parties and on perusal of the records, this court finds that entitlement of the petitioner to get the leave encashment benefit is not in dispute. The only issue which has arisen for consideration is as to whether on the face of the standing order no. 784 dated 21.08.1997 (Annexure 'B' to the second supplementary counter affidavit), the respondents may be held justified in withholding of leave encashment amount of the petitioner. The standing order dated 21.08.1997 reads as under:-

"BIHAR STATE ELECTRICITY BOARD, PATNA

(DEPARTMENT OF GENERAL ADMINISTRATION)

STANDING ORDER No. 1/pension-EEB-4244/97 784/Dated, the 21.08.97

The issue with regard to payment of cash in lieu of unavailed period of earned leave and commutation of pension of the employees/officers committed irregularities and facing charges which remained undecided till the date of superannuation was under consideration of the Board for some time past.

After careful consideration it has been decided that commutation of pension and payment of cash in lieu of unavailed period of earned leave may be sanctioned after the charges against the concerned employees/officers are closed.



The order comes into force with immediate effect but all un-decided cases shall be covered by the above decision.

By order of the Bihar State Electricity Board
(Shivendu)
Secretary

Memo No. 1923/EB/Patna, Dated, the 21.08.97

Copy forwarded to Member (F)/Member (Gen.)/Member (Trans.)/Tech. Sec. To Chairman/Private Secretary to Secretary for Information.

(Shivendu)
Secretary

Memo No. 1923/Eb. Patna, Dated, the 21.08.97

Copy forwarded to Engineer-in-Chief/All General Manager-cum-Chief Engineers/All Chief Engineer/All General Managers/All Project Managers/All elect. Superintending Engineers/All Director of Account/Director of Finance/All Director of Personnel/Sr. Law Advisor/Director, Departmental Proceedings/All Dy. Law Advisor/All Joint Secretaries/All Elect. Executive Engineers/All Dy. Director of Accounts/All Under Secretaries/All Personnel Officers/All Asst. Elect. Engineers/All Labour Welfare Officers/All Administrative Officers for information and necessary action.

(Shivendu)
Secretary"

The answer to the aforesaid issue is not difficult on the face of the material by way of modified standing order dated 17.12.2004 which is admittedly not applicable to the petitioner. The modified standing order dated 17.12.2004 is extracted herein for ready reference"-

"BIHAR STATE ELECTRICITY BOARD, PATNA
DEPARTMENT OF GENERAL ADMINISTRATION.

STANDING ORDER NO. 1/Pen-EEB-4244/97(part)/850 dtd. 17.12.2004

The issue with regard to payment of cash in lieu of unavailed period of earned leave and commutation of pension to the employees/officers of the Board committed irregularities and facing charges till the date of superannuation was reviewed by the Board in light of the observation of the Hon'ble High Court in some of the court cases faced by the Board and after due consideration, it has, ultimately been decided that only in cases of pending Depttl./criminal proceedings against any employee/officer of the Board, payment of leave encashment and commutation of pension shall be withheld otherwise not.



2. Board's Standing Order no. 784 dated 21.08.97 read with Standing Order No. 836 dated 01.01.2001 is hereby modified to the above extent.

By order of the
Bihar State Electricity Board
(Dipak Kumar Singh)
Secretary

Memo No. 1167 /EB., Patna, dated 17.12.2004
Copy forwarded to Under Secretary to Chairman/Under Secretary to Member (Finance)/Under Secretary to Member (T&D)/under Secretary to Member (Generation)/Under Secretary to Secretary, Bihar State Electricity Board, Patna for information.

(Dipak Kumar Singh)
Secretary

Memo No. 1167 /EB., Patna, dated 17.12.2004
Copy forwarded to All General Manager-cum-Chief Engineers/All Chief Engineers/All Project Managers/All Elect. Superintending Engineers/All Financial Controllers/All Directors/Dy. Law Advisor (Sri R.K. Sahay)/All Joint Secretaries/All Deputy Director of Accounts/All Dy. Director of Personnels/All Elect. Executive Engineers/All Personnel Officers/Under Secretary (Sri Hari Das Rajak)/All Administrative Officers/All Assistant Elect. Engineers/All Labour Welfare Officers/All Accounts Officers, Bihar State Electricity Board for information and necessary action.

(Dipak Kumar Singh)
Secretary"

It is an admitted position that this modified standing order came into effect much after retirement of the petitioner. The fact that the respondents had to come out with modified standing order to cover those cases in which retired employees are facing criminal proceeding indicates that prior to the standing order dated 17.12.2004 the respondent Corporation had not come out with a categorical decision to withhold the leave encashment benefit of the retired employee against whom no departmental proceeding is pending. It is only after the modified standing order now the employees of the respondents who are facing departmental as well as



criminal proceeding on the date of their retirement would be covered.

The fact that Saryu Prasad Singh who was also an accused in the vigilance case had been sanctioned the payment of leave encashment benefit would be another indication of the fact that the respondents themselves understood the erstwhile standing order to mean and understand that the employees against whom no departmental proceeding was pending would be entitled for the benefit of leave encashment benefit.

Although learned counsel for the respondents has pointed out from one of the affidavits that said Saryu Prasad Singh had not received the leave encashment benefit but the facts as appearing from the impugned order (Annexure '3') that he was sanctioned the leave encashment benefit and the said sanction was never cancelled is not in dispute.

In view of the aforesaid discussions, this Court finds that as on date of retirement i.e. 31.03.2004 the petitioner was entitled to get the leave encashment benefit and there was no standing order covering the case of the petitioner so as to allow withholdment of the retiral benefits such as leave encashment benefit. Needless to say that the Hon'ble Apex Court in the case of **D.K. Nakara & Ors. Vs. Union of India** reported in **(1983) 1 SCC 305** and **Deokinandan Prasad Vs.**



State of Bihar & Ors. reported in **(1971) 2 SCC 330** as also in the case of **D.V. Kapoor Vs. Union of India** reported in **AIR 1990 SC 1923**, has held that the retiral dues are in the nature of constitutional right granted to an employee and such rights cannot be taken away without there being a law on the subject.

No doubt in this case the benefit of leave encashment has been conferred by a standing order but to withhold such benefit there must be a categorical standing order providing the circumstances under which such benefit may be withheld. Since in this case it has been admitted that Annexure 'A' i.e. the modified standing order dated 31.12.2004 came into effect much after the retirement of the petitioner, the court would take a view that Annexure '3' by which the representation of the petitioner has been rejected would not sustain the test of law. Annexure '3' being an order which has been passed ignoring that the modified standing order cannot be applied against the petitioner, this Court sets-aside the same and directs the respondent authorities to release the leave encashment benefit due to the petitioner with statutory interest within a period of 60 days from the date of receipt/production of a copy of this order.

As regards the payment of gratuity, it has been contended on behalf of the petitioner that no statutory interest has been paid, however, learned counsel for the respondents



has repelled this contention and submitted that the statutory interest is always calculated while paying the gratuity and the same has been done in the case of the petitioner.

Be that as it may, in case the petitioner is of the opinion that no statutory interest has been paid on the gratuity amount, he may represent in this regard to the respondent authorities who will look into the same and will take an appropriate decision thereon in accordance with law within the aforesaid period.

In the nature of the dispute, however there would be no order as to cost.

This Writ Application stands allowed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.02.2021
Transmission Date	

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'.

