

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6678 of 2018

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Ram Chandra Choudhary Son of Budho Choudhary, Resident of Giriak, P.S.-
Giriak, District-Nalanda.

... .. Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation, Head Office, Patna
2. The Managing Director, Bihar State Food and Civil Supplies Corporation,
Head Office, Patna.
3. The Chief of Administration, Bihar State Food and Civil Supplies
Corporation, Head Office, Patna.
4. The District Manager, Bihar State Food and Civil Supplies Corporation,
Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha Mr.Kumar Gangesh Gunjan
For the Respondent/s	:	Mr. Nirmal Kumar Mr.Shailendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

9 13-01-2021 Heard Mr. Prashant Sinha, learned counsel for the

petitioner and Mr. Nirmal Kumar, learned counsel for the Bihar

State Food and Civil Supplies Corporation.

The petitioner seeks payment of gratuity and leave
encashment amount to the petitioner. Petitioner further seeks
direction to the respondents to make payment of salary for the
period from 01.02.2015 to 19.05.2017, as the petitioner worked
on contract basis after his retirement, with statutory interest of
18% per annum.

Admittedly, the petitioner retired from the post of



Assistant on 31.01.2015 while working in the office of the District Manager, Begusarai. The petitioner before his retirement filed petition for his re-employment on the same post on contract basis but the petitioner was never appointed. The District Manager recommended the application of the petitioner for appointment on contract basis after his retirement but the authority competent never approved the appointment of the petitioner on contract basis. Therefore, the Bihar State Food and Civil Supplies Corporation is not liable to make any payment to the petitioner if he worked on mere assurance of the District Manager, B.S.F.C., Begusarai. The petitioner, if so advised, may sue the District Manager for payment of salary on his assurance he claimed to have worked after his superannuation.

So far as the payment of gratuity and leave encashment of the petitioner after his superannuation is concerned, the B.S.F.C. filed counter-affidavit and stated that a sum of Rs.2,13,038.37/- is lying due against him. B.S.F.C. wrote letter to the petitioner for payment of dues lying against him but the petitioner did not make payment. The principal amount and the interest comes to Rs.8,71,703.58/-.

Mr. Prashant Sinha, learned counsel for the petitioner submits that if any amount is lying due against the petitioner, the



Corporation is only entitled to recover the same from the leave encashment of the petitioner after affording opportunity to hear the petitioner. The Corporation is not entitled to recover the alleged dues from the gratuity of the petitioner. In view of the provisions as contained in sub-section (6) of Section 4 of Payment of Gratuity Act, 1972 which provides that notwithstanding anything contained herein above- if the employee is terminated on the ground of moral turpitude or on the allegation of financial loss caused to the employer, the amount of gratuity can be withheld but the gratuity cannot be withheld on any other charge or ground.

Mr. Nirmal Kumar, learned counsel for the B.S.F.C. contending the submission of the learned counsel for the petitioner submits that Corporation has already formulated its own rules with regard to payment of retirement benefits, leave encashment and gratuity. The rule provides that if an employee embezzles or misappropriates any amount of the Corporation, the Corporation may recover the same from the gratuity and earned leave of such employee.

Having considered the submissions of both sides, I think it proper to dispose of this writ petition with a direction to the petitioner to file a detailed representation before the



Managing Director, B.S.F.C. who shall consider the representation of the petitioner within three months from the date of receipt of such representation and pass reasoned order with regard to payment of leave encashment and gratuity to the petitioner which the petitioner is entitled to after his retirement.

Accordingly, this writ petition stands disposed of.

(Prabhat Kumar Jha, J)

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