IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4826 of 2019

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Arvind Kumar, son of Late Avadhesh kumar Sinha, resident of village- Aijhi, P.O- Katari, P.S- Korma, district- Sheikhpura at present resident of Naya Tola Ghera, Shivaji Colony, P.S.- Agam Kuan, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj, Government of Bihar, Patna
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna
3. The Director, Panchayati Raj Department, Government of Bihar, Patna
4. The Deputy Development Commissioner -cum-chief Executive Officer, Zila Parishad, Rohtas, Sasaram Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar Verma, Advocate
For the Respondent/s	:	Mrs. Rashmi Ranjan, AC to SC-7
For the Zila Parishad	:	Mr. Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 13-12-2022

Heard Mr. Santosh Kumar Verma, learned counsel for the petitioner, Dr. Anand Kumar, learned counsel for Zila Parishad, Rohtas, Sasaram and Mrs. Rashmi Ranjan, learned AC to SC-7.

2. The present writ application has been filed seeking a direction upon the respondents to pay the following post retiral legal dues to the petitioner i.e. Amount of gratuity, Group Insurance, Provident Fund, Earned leave for 300 days and arrears of salary.

3. The petitioner was superannuated on 28.02.2018 from the post of Junior Engineer from the office of Zila Parishad,

Rohtas at Sasaram, however, when the post retiral benefits have not been paid to him, he was compelled to approach this Court by filing the present writ petition and during the pendency of the writ petition, the substantive retiral benefits have stood paid to him.

4. It is the case of the petitioner that at no point of time, the petitioner was subjected to any departmental enquiry nor he faced any judicial proceeding, but while ensuring the payment of retiral dues, the amount of Rs.8,30,093/- has been deducted against his outstanding dues of Rs.14,39,984/- and balance amount of a sum of Rs.6,09,891/- has been paid to the petitioner vide Cheque no.921 dated 28.10.2022, which is under challenge before this Court and the same is only required to be adjudicated as to whether the action of the respondent Zila Parishad in deducting the aforesaid amount is valid and justified in the facts of the present case.

5. It is next submitted by the learned counsel for the petitioner that during his service period vide letter no. 209 dated 11.01.2014, he was directed to deposit a sum of Rs.83,27,907/-, which was paid in advance to the petitioner for execution of different works by him. In response to the aforesaid letter, the petitioner had submitted all the vouchers of entire expenses of work to the accountant, which shows the proper execution of the

work in different schemes of Zila Parishad, Rohtas, but in spite of furnishing vouchers of entire expenses of work, the respondent had arbitrarily adjusted an amount of Rs.8,30,093/- against the admitted retiral dues of the petitioner.

6. A counter affidavit has been filed on behalf of respondent no.4 and it is vehemently submitted that the petitioner was paid Rs.83,27,907/- in advance for execution of different works by the petitioner. However, the petitioner deposited only Rs.74,97,814/- and the rest amount of Rs. 8.30,093/- has not been deposited by the petitioner, though several letters have been issued to him from time to time, but the petitioner did not deposit the same. It is submitted that instead of depositing the amount, the petitioner filed a representation on 30.11.2018 requesting therein that Rs.19,78,504/- is found payable to the petitioner under the head of all the retiral benefits, however, till date Rs.8,30,093/- has been shown to be as an advance in the name of the petitioner, hence he requested to ensure the payment of retiral benefits after deducting an amount of Rs.8,30,093/- and accordingly on his request, the admissible retiral dues have stood paid to the petitioner after deducting the advance amount of Rs.8,30,093/-.

7. A rejoinder to the counter affidavit has been filed and submission has been made that instead of submission of the

vouchers in respect to the expenses incurred in the execution of work, the deduction made from the retiral benefits is wholly arbitrary, unjustified and not permissible in law. Learned counsel for the petitioner submits that in fact when his post retiral dues was not paid, he had requested the authority concerned vide his letter dated 06.06.2018 (Annexure-1) to ensure payment after keeping the amount of Rs.8,30,093/- in abeyance, because the petitioner was in serious need of money for marriage of his daughter. He further submits that though the petitioner superannuated on 28.02.2018, but on the pretext of verification of the vouchers or non-submissions of the vouchers the payment of entire retiral dues remained withheld, due to which the petitioner left with no option, but to file another application on 30.11.2018 for making payment of rest of the remaining amount after deducting the amount of Rs.8,30,093/- in question, so that the marriage of his daughter can be solemnized. He next contended that though in the application dated 30.11.2018 filed by the petitioner, it appears that he requested to ensure payment of retiral benefits after deducting the same, but the same was not intent of the petitioner, rather it was only requested to ensure rest of the admitted amount till verification of the vouchers.

8. He further submitted that no recovery can be made from the retiral dues of an employee unless and until such a person is found guilty of misconduct or having caused pecuniary loss to the government by his misconduct or negligence in a departmental or judicial proceeding.

9. While concluding his submission, he further reiterated that no departmental proceeding or any criminal case had ever been filed against the petitioner for misappropriation of money advanced to him for execution of the work in different schemes of Zila Parishad, Rohtas, because the petitioner had executed the work properly and produced the vouchers of entire expenses of work to the accountant, but in spite of that the respondent has illegally adjusted an amount of Rs.8,30,093/- against the outstanding retiral dues of the petitioner.

10. Having heard the learned counsel for the petitioner as well as respondent no.4 and considering the materials available on record, it is evident that certain amount was given to the petitioner in advance for execution of work under different schemes of Zila Parishad, Rohtas and after executing the works, the vouchers of expense were given to the accountant, but after verification, the vouchers for the expenses of the work to the tune of Rs.8,30,093/- was found short and, as such, the letters were

issued to the petitioner to deposit the amount. It is admitted fact that at no point of time any departmental enquiry has been conducted nor any proceeding has been initiated against the petitioner for establishing the guilt of the petitioner or having caused pecuniary loss to the Zila Parishad.

11. It is well settled that any action or order in respect of a person causing adverse consequences must be in conformity with the principles of natural justice. Any consent of an employee in duress cannot be said to be a valid consent. It is well settled that any undertaking of an employee, which is detrimental to his own right cannot be enforced by an employer that too where the employer is a modal employer.

12. Admittedly, prior to the deduction of the amount, in question, no decision has been taken by the respondent Zila Parishad, Rohtas. At this stage, this Court think it apt and proper to quote the observations made by the Hon'ble Supreme Court in the case of **State of Punjab and another vs. Dharam Pal**, reported in **(2017) 9 SCC 395** wherein it has been held that the Government or its agency in its capacity as a model employer cannot be permitted to make a distinction between its employee and seek to ventilate the same on the terms of an agreement between the Government and its employee, if it is unconscionable. <u>Any of</u>

commitment/agreement not to ask for any rightful claim cannot be used to the disadvantage of the employee by the Government.

13. It is needless to say that the application of the petitioner filed before the respondent authorities must be considered in its proper perspective as to in what situation the same was filed. Admittedly prior to the deduction of the amount in question, the respondent Zila Parishad, Rohtas has not come out with any decision after following any procedure as is required under the law for deduction of the amount, in question, hence the consent of the petitioner even for deduction or keeping the amount, in question, in abeyance till final decision shall not be taken into consideration is wholly detrimental to his own right/claim.

14. In view of the aforesaid discussions made hereinabove, this Court finds that the consent of the petitioner was in complete duress and as such it cannot be used against the petitioner, hence this Court directs the respondent Zila Parishad, Rohtas, Sasaram to ensure payment of deducted amount to the tune of Rs.8,30,093/-, to the petitioner, as has been deducted against his retiral benefits without any authority of law, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

15. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	19.12.2022
Transmission Date	NA