IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3246 of 2020

==

Ram Deo Manjhi Son of Late Hira Manjhi resident of Village- Nawalpur, P.s.- Barhariya, District- Siwan

... ... Petitioner/s

Versus

1. The Managing Director-cum-Chairman, Food Corporation of India Food Corporation of India, 16-20, Barakhambha Lane, New Delhi
2. The Executive Director (East Zone) Food Corporation of India, Zonal Office (East), 10-A, Middleton Row, Kolkata-71
3. The General Manager (Region), Food Corporation of India, Arunahal Building, Exhibition Road, Patna
4. The Divisional Manager, Food Corporation of India, Divisional Officer, Digha Ghat, Patna

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Rajen Sahay, Advocate.
For the FCI	:	Mr. Amiya Kunal, Advcoate.

==

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

5 03-11-2022 Heard Mr. Rajen Sahay, learned counsel for the petitioner and Mr. Amiya Kunal, learned counsel for the Food Corporation of India.

The present application has been filed for the following reliefs:-

(i) For direction to the respondents to make payment of pension w.e.f. 01.05.2017 under FCI Pension Scheme including arrears of pension from the date of retirement.

(ii) For direction to the respondents to pay the deducted amount of Rs. 87,452.00 (Rupees Eighty Seven Thousand Four Hundred Fifty Two) as an arrear for pension for his pay for the month of April, 2017.

(iii) For direction to the respondents to pay the encashment of leave salary i.e. earned leave and LHP (Leave on half pay) outstanding against his leave account on the date of superannuation/retirement of petitioner as on 30.04.2017.

(iv) For direction to the respondents to pay interest on gratuity which was paid to the petitioner on 13.12.2018 though he is entitle for payment of interest of gratuity from 01.05.2017 at the rate of 10% fill the date of payment.

(v) For direction to the respondents to grant any other relief(s) to which the petitioner is entitle in accordance with law.

Shorn of unnecessary details, it is submitted by the learned counsel for the petitioner that the petitioner was appointed as a watchman on 30.05.1978 in the Food Corporation of India. Thereafter, time to time he was promoted and upgraded to different posts and lastly while working as Manager Depot, he was allowed to superannuate on 30.04.2017. It is further contended that during his service tenure on account of certain charges, he was put to departmental proceeding, which resulted into infliction of *"A penalty of "Reduction of pay by 3 (three) stages in the time scale of pay of Manager for 3 (three) years with immediate effect. It is further directed that he will not earn increments during the period of reduction and that on the expiry of the period, the reduction will not have the effect of postponing his future increment of pay plus recovery of Rs. 2 (two) lakhs in 36 (thirty-six) equal installments from his monthly salary"*. He further submits that apart from the aforesaid departmental proceeding, which culminated into aforesaid punishment, a criminal case has also been instituted against the petitioner, which is still pending before the learned court of CBI bearing Case No. RC 023 2012 A 0025.

It is next submitted that though after superannuation, the petitioner was allowed the payment of gratuity to the tune of Rs. 10 Lakhs along with the interest, however, the petitioner has been denied the benefit of leave encashment and outstanding leave of half pay, on the plea of pendency of criminal case. It is also submitted that in pursuant to the punishment inflicted by the FCI, an amount of Rs. 10,60,421/- had already been recovered and as such, withholding of any further amount against the retiral dues of the petitioner is not at all justified and proper, in view of the fact that neither any rules and regulations and nor any law authorizes the respondent to withhold the same.

On the other hand, learned counsel for the FCI drawn the attention of this court towards paragraph no. 2 iii and by referring clause 10.4 of the circular dated 30.12.2016, submits that the said clause clearly stipulates that in case where employee/ex-employee are relieved and vigilance action is under process, Corporation, contribution and interest accrued thereon may be withheld till the finalization of the proceeding. It is also submitted that the order of withholding of leave encashment and other benefits have been passed on account of pendency of the criminal case and any order of the Corporation would be abide by the final order/judgement passed by the learned criminal court.

In reply to the aforesaid submissions, learned counsel for the petitioner submits that clause 10.4 of the circular dated 30.12.2016 clearly suggests that any order of withholding of payment of pension or its benefit can be passed, only in case of resignation, termination, dismissal/removal. However, so far the present case is concerned, the petitioner has been allowed to superannuate and he has been relieved from his services. He next submitted that 39.3 of FRSL clearly stipulates as under:-

> "The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any".

He lastly submitted that respondent Corporation had already realized more than what the punishment was imposed and as such, withholding of any further amount is not permissible.

Having heard the learned counsels for the parties and considering the materials available on record, this court finds substance in the submissions made by the learned counsel for the petitioner. It is needless to say that clause 10.4 of the circular dated 30.12.2016 in its clear terms suggests that "in case of separation of an employee on account of resignation, termination, dismissal/removal etc., payment of pension benefit shall be computed based on member's contribution only, if any, and interest accrued thereon". From the materials available on record, it appears that the respondent authorities are neither empowered to withhold the leave encashment and other retiral benefits on account of pendency of criminal proceeding once the employee has already been allowed to superannuate without there being any proceeding for withholding of the same. Further more departmental proceeding is not culminated into termination/dismissal/removal of the petitioner, rather he has been allowed to superannuate, unconditionally and the money which was found recoverable has already been recovered.

In view of the aforesaid, the present writ application stands allowed with a direction to the respondent authorities of the FCI to make payment of pension w.e.f. 01.05.2017 under the FCI pensionary scheme including arrears of pension from the date of retirement as also ensure payment of encashment of leave salary outstanding against his leave account on the date of superannuation of the petitioner i.e. on 30.04.2017 and further to pay the deducted amount of Rs. 87,452/- as an arrears for pension for his pay for the month of

April, 2017. It is needless to say that the entire exercise of calculation and payment must be completed within a period of twelve weeks from the date of receipt/production of a copy of this order.

Accordingly the present writ application stands allowed.

(Harish Kumar, J)

shakir/-

U			