IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14018 of 2021

==

Suresh Kumar Son of Ramdeo Prasad Thakur Resident of Mohalla- Sri Krishna Nagar, Ward No. 1, Mehsaul, P.O. and P.S.- Sitamarhi, District- Sitamarhi, the retired Peon -cum- Chainman, Building Construction Department, Building Division, Purnea.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum- Special Secretary Building Construction Department, Government of Bihar, Patna.
4. The Executive Engineer Building Construction Department, Building Division, Purnea.
5. The Sub- Divisional Officer Building Construction Department, Building Sub- Division No. III, Purnea.
6. The Treasury Officer Sitamarhi, District- Sitamarhi.
7. The Accountant General Bihar, Patna.
8. The Assistant Accounts Officer/Observer Officer of the Accountant General, Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s :	Mr. Vijay Kumar Singh, Advocate.
	Mr. Abhinav Shandila, Advocate.
For the Accountant General:	Raj Nandan Prasad, Advocate.
For the Respondent/s :	Mr. K.K. Singh, AC to GP 22.

==

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 29-11-2022

Heard Mr. Vijay Kumar Singh, learned counsel for the petitioner duly assisted by learned counsel Mr. Abhinav Shandila, Mr. Raj Nandan Prasad, learned counsel for the respondent

Accountant General and Mr. K.K. Singh, learned AC to GP 22 for the State.

The present writ application has been filed seeking a direction upon the respondents to ensure the payment of all the retiral benefits as well as arrears of salary for the period of November 2019 to January 2020, and further seeks for quashing of the part of the pension/Gratuity/Commutation payment order contained in Memo no. 03/PEN250221034/202111031382P dated 03.04.2021 issued under the signature of respondent no.8, whereby and whereunder the amount of Rs.2,79,763/- has been deducted from the head of gratuity.

The short facts which led to the filing of the writ application is that the petitioner was appointed as Peon-cum-Chairman (Janjirwahak) in the year 1986. While he was working as a Peon-cum-Chairman (Janjirwahak), he was handed over the charge of articles lying in the office of Assistant Engineer, Education Cell, Muzaffarpur, on 22.10.2009 and 22.12.2009, as contained in Annexure P-1 and P-1/1.

It is contended by the learned counsel for the petitioner that time without number, the petitioner had filed application before the concerned authorities including respondent no. 4, drawing his attention towards the dilapidated condition of the godown and also requested either to shift the articles lying in the office/godown of education department or to repair the gate for the protection of the articles lying in the said godown. He also drawn the attention of this court towards the application filed by the petitioner on 11.09.2012 and thereafter further applications filed on different occasions in different years requesting the respondent no.4 to take proper steps for shifting of the articles or repairing of the gate but no action was taken and in the meanwhile the petitioner superannuated on 31.01.2020. He further submits that during the pendency of this writ application though all the retiral benefits/outstanding dues have stood paid to the petitioner, however, a deduction of Rs.2,79,763/- has been made from the head of gratuity without holding any inquiry or issuing show cause notice to the petitioner.

In response to the aforesaid submissions learned counsel for the State vehemently confronted the submissions of the learned counsel for the petitioner and submits that in fact prior to the retirement of the petitioner, the petitioner was served with a show cause notice to the effect that there were certain pending charges/allegation against the petitioner regarding disappearance and theft of materials/articles in question, which were kept under the charge of petitioner during his service period and on valuation that came to Rs.2,79,763/-, which was also approved by the Executive Engineer, Assistant Engineer and other three officers of the Building Construction Department. He further submitted that since the articles which were kept in the charge of the petitioner that was found missing and as such the valuation of the articles have been made and the same has been deducted from the retiral benefits of the petitioner.

It is the admitted fact that before making the deduction of amount at no point of time any show cause notice has ever been served to the petitioner nor any departmental proceeding much less any proceeding under Rule 43 (b) has been initiated.

It is well settled that any action which has adverse consequences in respect of a person cannot be taken without the person being heard. It is the fundamental principle of administrative law that no person shall be condemned unheard or any action causing prejudice, without following the principle of natural justice is nullity. It has been observed by the Apex Court in the case of **Menka Gandhi (AIR 1978 SC 597)** that even there is no specific provision for showing cause, yet in a proposed action, which affects the right of an individual, it is the duty of the authority of being heard. This duty is said to be implied to nature of functions to be preformed by authorities having power to take punitive or damaging action.

Delhi Transport Corportation Vs. DTC Mazdoor Congress, 1991 Suppl (1) SCC 600 is another Constitution Bench Judgment, which throws considerable light on the observance of the principle of natural justice. In the aforesaid case it has been held that the *audi altrum partem* rule, which, in essences, informs the equality clause of Article 14 of the Constitution of India, is applicable not only to *quasi judicial* orders but to administrative orders effecting prejudicially the party in question unless application of rule has been expressly excluded by Act, or regulation or rule. It is, thus, trite that any action prejudicial to a citizen, which is taken by the State or Public Authority without affording him an opportunity of being heard would be unfair and arbitrary. An action which is unfair and arbitrary would fall foul of rule of equality, which is soul and spirit of Article 14 of the Constitution of India.

It is also evident from the record that time to time the petitioner has informed the authorities concerned and also requested for shifting of the articles, which was kept in a dilapidated godown but no action has been taken on the request made by the petitioner, hence the respondent authorities must be held accountable for latches and lax attitude in providing the safe custody to the articles and for which the petitioner cannot be subjected to any punishment. It is also admitted fact that the inventory was also prepared behind the back of the petitioner and all the articles kept in the godown have been taken to the custody of District Superintendent of Education, Muzaffarpur, as per the direction of the District Magistrate. The entire preparation of the inventory and taking over of the charge has been made behind the back of the petitioner, and he had not been given any reasonable opportunity to place his case and no notice or any cause shown to him before making any deduction from retiral benefits.

In view of the aforesaid factual and legal position as discussed hereinabove, the action of the respondent authorities in withholding the amount of Rs.2,79,763 is found to be not sustainable in the eyes of law as well as on facts and accordingly the deduction made from the gratuity is declared to be bad. The respondent authorities are directed to refund the deducted gratuity amount preferably within the period of eight weeks from the date of receipt/production of the copy of the order, failing which the petitioner would be entitled to 8 per cent interest over the due amount till actual payment and the same would be recovered from the erring officials.

It is needless to say that if there is still any retiral/outstanding dues unpaid the same must be paid within the aforesaid period.

Accordingly, the writ application stands allowed.

(Harish Kumar, J)

manoj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2022.
Transmission Date	NA