IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23932 of 2018

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Ram Chandra Prasad Singh Son of Late Mohan Singh Resident of Village Bhakhurua More, Police Station Daudnagar, Distt.- Aurangabad.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Engineer - in - chief- - cum- Additional Commissioner - cum - Soecial secretary, Road Construct
3. The Superintending Engineer, Road Construction Department, Road Circle, Saharsa.
4. The Executicve Engineer, Road Construction Department, Road Division, Saharsa.
5. The Director Provident Fund, Directorate of Provident Fund, Directorate of Provident Fund, Pant Bha
6. The District Provident Fund Officer, Saharsa.
7. The Accountant General Accounts and Entitlement, Bihar, Patna, Birchand Patel Path, Patna.
8. The Treasury Officer, Daudnagar, Aurangabad.
9. The Treasury Officer, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate.
For the Respondent/s : Mr. Subodh Kumar, AC to SC-26.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

10 23-11-2022 Heard Mr. Rupak Kumar, learned counsel for the petitioner, learned learned counsel for the Accountant General, Bihar and Mr. Subodh Kumar, learned AC to SC-26 for the State.

The present writ application has been filed seeking a direction upon the respondents to ensure the payment of all the retiral dues including Pension, Gratuity, Leave Encashment, General Provident Fund, Group Insurance with statutory interest.

The short facts for the appreciation of the issue is that a departmental proceeding was initiated while the petitioner was working as Junior Engineer in the Road Transport Department, he was put to departmental proceeding, which was initiated vide office order no. 175 dated 24.06.2003 for the alleged irregularities committed during the period of 1995-96. It is further contended that the petitioner was placed under suspension w.e.f. 25.07.2003 and he remained under suspension until 31.07.2012 and he has not been paid any subsistence allowance. It is next contended that the said departmental proceeding culminated into dismissal of the petitioner from services vide office order no. 202 dated 08.06.2007. The said order of dismissal was challenged by the petitioner in CWJC No. 12900 of 2007 and the learned coordinate Bench of this Hon'ble Court vide order dated 22.03.2018 has been pleased to quash the impugned order of dismissal, after having found the impugned order in complete violation of principle of natural justice. Learned coordinate Bench of this Hon'ble Court while allowing the writ petition has held that as a result of quashing of the dismissal order, the petitioner would be entitled to reinstatement in service with all consequential benefits.

At this juncture, learned counsel for the petitioner further submits that during the pendency of the present writ application, the petitioner has been paid part of his retiral benefits including 90% of pension and gratuity. The entire amount of leave encashment has been withheld on account of pendency of departmental proceeding, which has been initiated under Rule 43(b) of the Bihar Pension Rule.

Now the only grievance of the petitioner remains that though, earlier the retiral benefits of the petitioner was calculated on the basis of last pay drawn as on the date i.e. 19.07.2002, as per the direction issued by the Finance Department vide memo no. 630 dated 21.01.2010, however, subsequently in compliance of the order of this Hon'ble Court dated 22.11.2019, the respondent has fixed the notional salary of the petitioner @ Rs. 19,680/- per month as on 31.07.2012 and thereafter, provisional pension has been sanctioned. It is further submitted that from the letter as contained in annexure "J" to the supplementary counter affidavit filed on behalf of the respondent nos. 1 to 4, it is evident that the salary of the petitioner has been fixed notionally without adding the admissible increment to the petitioner from 2002 to 2012, which is not only in the teeth of order dated 22.03.2018 passed by this Hon’ble Court rather a clandestine move to overreach the order of the Hon’ble Court.

On the other hand, learned counsel for the State submits that as the departmental proceeding is already pending against the petitioner and final fixation of pension and gratuity and other emoluments have not been done, hence, every payment shall be abide by the final outcome of the departmental proceeding.

Having heard the learned counsels for the parties and the materials available on record, this Court finds substance in the submissions made on behalf of the learned counsel for the petitioner that the action of the respondent in fixing notional salary of the petitioner without adding increment payable to the petitioner from 2002 to 2012 is completely against the letter and spirit of the order/judgement of this Hon’ble Court dated 22.03.2018 whereby a clear direction was given to reinstate the petitioner in service with all consequential benefits and as such, notional salary of the petitioner cannot be fixed without adding the increments. It is made clear that an increment is the increase in the current salary of an employee by a certain amount and as such part of the salary.

In view of the aforesaid facts, the present writ application stands disposed of with a direction to the respondent nos. 2 and 4 to ensure the re-fixation of the salary and other emoluments after adding the increments for the period from 2002 to 2012 and further ensure payment of arrears of pension, regular pension and admissible retiral dues accordingly as early as possible preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

It is needless to say that after issuance of the sanction letter, the Accountant General, Bihar, Patna shall issue necessary authority slip for payment of the same.

(Harish Kumar, J)

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