IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20732 of 2021

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Shyam Behari Rai S/o- Late Prabhu Nath Rai Resident of Village- 2033/4, Viswanath Puri Colony, P.S.- Chitaipur, District- Varanasi, U.P. PIN- 221011.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Old Secretariat, Harding Road, Patna- 800001.
2. The Law Secretary, Law Department, Govt. of Bihar, Patna.
3. The Registrar General, High Court, Patna.
4. The Registrar (Administration), High Court, Patna.
5. The Principal Secretary, General Administration, Govt. of Bihar, Patna.
6. The District and Session Judge, Kishanganj.
7. The Accountant General, Mahalekhakar Bhawan, Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madhaw Rai, Adv.
		Mr.Rabindra Nath Tiwari, Adv.
For the Respondent/s	:	Mr.Gyan Prakash Ojha (Ga7)
For the Respondent no. 3	:	Mr. Piyush Lall, Adv.
For Accountant General	:	Mr. Chandan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-02-2023

Re: Interlocutory Application No. 01/2022.

This Interlocutory Application has been filed with a prayer for allowing the petitioner to implead the Accountant General, Mahalekhakar Bhawan, Patel Marg, Patna as respondent no. 7.

Since the issue in the present writ petition relates to payment of certain dues to the petitioner at the instance of office of the Accountant General, we deem it appropriate to allow the prayer of the petitioner for impleading Accountant General, Mahalekhakar Bhawan, Patel Marg, Patna as respondent no. 7.

The Interlocutory Application No. 01/2022 stands allowed.

C.W.J.C. No. 20732 of 2021

1. Heard Mr. Madhaw Rai, the learned Advocate for the petitioner, Mr. Piyush Lall for the respondent no. 3/Patna High Court and Mr. Chandan Kumar, the learned Advocate for the Accountant General. The State is represented by Mr. Gyan Prakash Ojha, the learned G.A. -7.

2. The petitioner, after his retirement from the post of Principal Judge, Family Court, Kishanganj on 31.12.2015, submitted a bill for retirement grant, namely, T.A. bill as well as admissible disturbance allowance on 29.06.2016, before the Accountant, Civil Courts, Kishanganj but the same has not yet been paid to him.

3. It appears from the records that when a representation was made by the petitioner for payment of such T.A. bill dues on 21.01.2021, the serving District & Sessions Judge, Kishanganj called for a report about the submission of such T.A. bill, but it was found that such T.A. bill was not available in the office records.

4. The T.A. bill in question was found to have reached the office only on 04.02.2021 by a registered post. The claim, therefore, becomes more than five years old, counted from the date of superannuation of the petitioner.

5. Nonetheless, the District & Sessions Judge, Kishanganj referred the representation of the petitioner to the Secretary of Law Department, Govt. of Bihar and also sent a reminder.

6. It has been urged before us that such delay in submission of a bill for a petty amount of less than Rs. 80,000/- could be condoned by the State Government. There is also a dispute with respect to filing of such T.A. bill within time.

7. The learned counsel for the petitioner has

submitted that it was given to the registry of the Civil Courts, Kishanganj, who may have misplaced it, but the bill reached the office by the registered post on 04.02.2021, which fact has been confirmed on enquiry by the learned District & Sessions Judge, Kishanganj.

8. The learned counsel for the State, however, has submitted that under Rule 104 of the Bihar Financial Rules, 1950, any claim against the Government, which is barred by time under the provisions contained in Section 3, read with the First Schedule of the Indian Limitation Act of 1908, or under any other provisions of law relating to limitation, is ordinarily to be refused and no claim on account of such a time barred item should be paid without the sanction of the Government. The rule further provides that the onus is upon the claimant to establish his claim to special treatment for a time barred item, and it is the duty of the authority against which such a claim is made, to refuse the claim until a case for other treatment is made out. All petty time-barred claims are to be rejected forthwith and only important claims of this nature be considered. It is the duty of the authority against which a

claim is made, as has been provided under Rule 104 of the Bihar Financial Rules, 1950 referred to above, to consider in the first instance the question of such claim being time barred before submitting it to the Accountant General for the issue of authority for payment. The Accountant General has the authority to refuse payment of all claims found to be time-barred until, the sanction of the Government has been obtained.

9. Mr. Madhaw Rai, the learned Advocate for the petitioner has submitted that Rule 104 of the Bihar Financial Rules, 1950 would not apply to the T.A. bill of the petitioner as it is covered by special rules. He further submits that even if it is not treated to be a claim under special rule, he has discharged the burden of proving that within five years of his retirement, such a claim was made by him but unfortunately, it was not registered in the office of the Registry of the Civil Courts, Kishanganj. Had such bill not been submitted within time, the copy of the bill by the registered post would not have reached the office of the Registry of the Civil Courts, Kishanganj. There is no complete bar of admitting such claim even if it is time

barred but for that, the authority against whom the claim is made, is to consider that question and then refer it to the Accountant General for the needful.

10. The administrative side of the Patna High Court, being the sanctioning authority, does not appear to have any objection with respect to respecting such claim of a retired Judicial Officer, if such claim is genuine, only for the reason of the same being time-barred in accordance with Rule 104 of the Bihar Financial Rules, 1950. It is for the government authorities to consider waiving such objection and referring it to the Accountant General for the payment to the petitioner.

11. We in the aforesaid circumstances, direct the petitioner to make a representation in that regard along with a copy of this order to the Secretary, Law Department, Govt. of Bihar within a period of 15 days, who in turn shall process it to be placed before the General Administrative Department, Govt. of Bihar to take a decision for waiving such objection of the claim being time barred and once it is done, it shall be sent to the Accountant General's office for consequent payment of the

bill.

12. We have said this for the reason that the petitioner has been a Judicial Officer against whom there has not been any complaint of any financial embezzlement and the petitioner has filed a representation, which has still gone unheeded that he requires money urgently for the treatment of his wife, who is seriously ill.

13. However, we leave it open to the State Government to take a call after verifying the claim of the petitioner to be genuine and whether the objection of the claim being time-barred could be waived.

14. With the afore-noted direction / observation, the writ petition stands disposed of.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.02.2023
Transmission Date	N/A