

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2958 of 2022

Chandra Bhushan Prasad, Son of Late Yogendra Prasad, Resident of Dumra
Ward No. 04, Road No. 03, P.O. and P.S. Dumara, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Animal and Fisheries Resource Department, Govt. of Bihar, Patna.
2. The Director, Fisheries Department, Govt. of Bihar, Patna.
3. The Joint Director, Fisheries, Govt. of Bihar, Patna.
4. The Deputy Director, Fisheries, Muzaffarpur.
5. The District Fisheries Officer-Cum-Chief Executive Officer, Aurangabad.
6. The Treasury Officer, Aurangabad.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sri Krishna Ranjan, Advocate
For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 05-02-2024

Heard Mr. Shri Krishna Ranjan, learned counsel for the petitioner and Mr. Sajid Salim Khan, learned SC-25, for the State.

2. The petitioner, who was initially appointed as Fisheries Inspector on 11.06.1992, subsequently promoted to the post of Fisheries Extension Officer w.e.f. 01.03.1995 in the pay scale of Rs.9300-13500/- and further been to the post of District Fisheries Officer on 27.03.2003. While the petitioner was posted at Aurangabad, he was put under suspension vide Memo No. 616 dated 17.04.2019, on the charge of defalcation made in the



year 2011 when he was posted at Nawada.

3. Subsequent thereto, the petitioner was put on a departmental proceeding vide Memo No. 926 dated 09.07.2019 by the order of Director, Fisheries, Bihar, Patna and the Enquiry Officer as well as Presenting Officer was appointed. The petitioner filed his reply denying all the charges, but no final decision has been taken, rather the suspension of the petitioner has been revoked w.e.f. 30.09.2019 and allowed to superannuate unconditionally. Besides, the aforesaid, during the posting of the petitioner as District Fisheries Officer, Aurangabad, a departmental enquiry was conducted in relation to theft of Government's vehicle, and the Enquiry Officer concluded that on account of negligence on the part of the petitioner, the said vehicle was stolen and thus a sum of Rs.5,48,796/- be recovered from him. On the basis of the enquiry report, the Director Fisheries, Bihar, Patna vide its Office Order, as contained in memo No. 640 dated 25.04.2018, concluded the departmental proceeding inflicting with the punishment of recovery of the aforesaid amount from the petitioner. The aforesaid order has been put to challenge by filing an appeal before the Principal Secretary, Animal Husbandry, Bihar, Patna, which is still pending consideration.



4. In the meantime, the petitioner came to be superannuated on 30.09.2019, from the office of Deputy Director, Muzaffarpur. Despite the petitioner having been superannuated on 30.09.2019, he has not been accorded his admissible retiral benefits/other dues, leading to filing of the present writ petition seeking a direction upon the respondents concerned to ensure all his retiral benefits, including the Pension, Gratuity, Leave Encashment, Group Insurance, General Provident Fund along with statutory interest.

5. During the pendency of the writ petition, the Director, Fisheries, Bihar, Patna has issued another Memo No. 1968 dated 26.09.2023 and directed for recovery of an amount of Rs.5,48,796/-, which has also been put to challenge by the petitioner by filing an interlocutory application, bearing I.A. No. 01 of 2023, which was allowed by this Court vide order dated 22.12.2023.

6. A Counter affidavit, as well as supplementary counter affidavit and reply to the interlocutory application have been filed. Referring to the averments made therein, learned counsel for the State submitted that the petitioner has already been paid all the substantive amount, except the 10% of the pension, full gratuity and leave encashment. It is further



submitted that since the petitioner has already been directed on numerous occasion to deposit the recoverable amount, but the same has not been paid till date. Further repeated request is being made to the petitioner to appear with a copy of his service book and cooperate in the matter so as to facilitate for redressal of his grievance, but the petitioner did not turn up nor submitted the relevant documents/details, thus in absence of service book, the claim of the petitioner could not be processed.

7. He next submitted that the remaining amount shall be paid after deduction of the recoverable amount. Moreover, the appeal is still pending before the Principal Secretary, Animal Husbandry Department, which is yet to be decided.

8. Having heard the learned counsel for the respective parties and taking note of the materials available on record, *prima facie*, this Court finds that the amount, which is found to be recoverable is only to the extent of Rs.5,48,796/-, which is the subject matter of appeal, as submitted by the learned counsel for the petitioner before this Court.

9. Needless to observe that the materials available on record clearly suggests that the admissible remaining due amount could not be processed on account of unavailability of



service book, which in the opinion of this Court can not be said to be justifiable and valid. Moreover, even as per the terms of the order of punishment directing for recovery is only confined to Rs.5,48,796/- and, thus, in any view of the matter withholding of any amount excess to the tune of Rs.5,48,796/- is not permissible in the eyes of law.

10. In the aforementioned facts, the submission of the petitioner finds force that withholding of full gratuity and leave encashment only for deducting an amount to the tune of Rs.5,48,796/- is not permissible in law. Further, the judgment rendered by the Full Bench of this Court in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors.**, reported in **2018 (2) PLJR 933**, shall also come in rescue of the petitioner.

11. In view of the aforesaid facts, the present writ petition stands disposed of with a direction to the respondent Director, Fisheries Department, Government of Bihar to ensure payment of all the remaining amount, including full Gratuity, Leave Encashment and 10% of pension after making deduction of the recoverable amount i.e. Rs.5,48,796/- preferably within a period of ten weeks from the date of receipt/production of a copy of this order.

12. It is made clear that the recoverable amount



from the petitioner to the tune of Rs.5,48,796/- shall be subject to the outcome of the appeal filed by the petitioner, if any.

13. The present writ petition stands disposed of with the aforesaid direction.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2024
Transmission Date	NA

