IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.400 of 2022
In
Civil Writ Jurisdiction Case No.1805 of 2016

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1. The Managing Director, State Food Corporation Bihar, Patna.
2. The Chief of Finance, State Food Corporation Bihar, Patna.
3. The Chief of Procurement, State Food Corporation Bihar, Patna.
4. The Chief of Claim, State Food Corporation Bihar, Patna.
5. The Desk Officer, State Food Corporation Bihar, Patna.
6. The District Manager, State Food Corporation, Rohtas at Sasaram.

... ... Appellants

Versus

1. Vijay Bahadur Singh, Son of Late Basudeo Singh, resident of Village and Post Office- Majhariya Industries Area, Police Station- Industrial Thana, District- Buxar.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 21266 of 2019

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Vijay Bahadur Singh, Son of Late Basudeo Singh, Resident of Village and P.O.- Majhariya Industrial Area, Police Station, P.S.- Industrial Thana, District- Buxar.

... ... Petitioner

Versus

1. The Managing Director, Bihar State Food and Civil Supplies Corporation, Bihar, Patna.
2. The Chief of Finance, Bihar State Food and Civil Supplies Corporation, Bihar, Patna.
3. The Chief Procurement, Bihar State Food and Civil Supplies Corporation, Bihar, Patna.
4. The Chief of Claim, Bihar State Food and Civil Supplies Corporation, Bihar, Patna.
5. The Desk Officer, Bihar State Food and Civil Supplies Corporation, Head Quarter, Patna.
6. The District Manager, Bihar State Food and Civil Supplies Corporation, Rohtas at Sasaram.

... ... Respondents

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Appearance :
(In Letters Patent Appeal No. 400 of 2022)

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG-5
For the Pvt. Resp	:	Mr. Surendra Mishra, Advocate

(In Civil Writ Jurisdiction Case No. 21266 of 2019)

For the Petitioner/s	:	Mr. Surendra Mishra, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, Advocate

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

Date : 05-03-2024

Heard Mr. Anjani Kumar, learned Senior Counsel, along with Mr. Shailendra Kumar Singh, learned counsel for the appellants-Corporation and Mr. Surendra Mishra, learned counsel representing the private respondent, who is also the petitioner in C.W.J.C. No. 21266 of 2019.

2. The captioned Letters Patent Appeal and the writ petition are being heard together in terms of the order of this Court dated 04.04.2023

3. The challenge in the present Letters Patent Appeal is made to a judgment of this Court dated 03.11.2017 in C.W.J.C. No. 1805 of 2016, whereby the learned Single Judge disposed of the writ petition directing the Managing Director, State Food Corporation, Bihar, Patna to ensure the payment of entire post retiral dues of the petitioner within a period of four weeks from the date of production/receipt of a copy of the order as also fixing the accountability on the erring officer for causing

delay in finalizing the post retiral dues. It was further directed to ensure payment of interest @ 9% from the date of completitiion of four weeks from 20th October, 2016 (the date of filing of counter affidavit) till the date of actual payment and the same shall be recovered from the erring officer who is found instrumental in causing delay in finalizing the post retiral dues.

4. Learned Senior Counsel for the appellants-Corporation, while assailing the impugned order contended that the learned Single Judge has failed to appreciate that the respondent-petitioner who came to be superannuated from the post of Assistant Godown Manager, SFC, Rohtas on 31.08.2009 had been facing the departmental proceeding on account of the alleged irregularities causing shortage of public food grains to the tune of Rs. 5,94,189.40/-, which culminated into the order of punishment vide Letter No. 5322 dated 25.06.2012, directing him to pay interest @ 18% over the quantified amount of Rs. 5,63,153.50 till 2003-04 and further interest at the Bank lending rate till the year 2008-09 against the defalcated public food grains. But neither the petitioner deposited the value of shortage of food grains nor challenged the final order of punishment as noted hereinabove. Learned Senior Counsel further contended that as the respondent-petitioner had been facing departmental proceeding and he was inflicted with the punishment as noted hereinabove, no delay has caused on the part of the Bihar State

Food Corporation (for short "the BSFC"). Thus, the interest @ 9% till the date of actual payment is wholly unwarranted.

5. Learned Senior Counsel, besides other submissions, lastly contended that in compliance with the direction of this Court, now the respondent-petitioner has already been accorded his lawful retirement benefits i.e. Gratuity amounting to Rs. 3,50,000/-. Rs. 2,13,147/- against the Earned Leave and further he has been paid arrears on account of 5th Pay Revision amounting to Rs. 1,98,729/-. This fact has also been admitted by the respondent-petitioner.

6. *Per contra*, learned counsel for the respondent-petitioner, submitted that while the respondent-petitioner was in service, the appellants-Corporation without any show-cause notice or affording any opportunity of hearing, recovered Rs. 5,63,163.50/- from his salary, showing shortage of food grains of Corporation along with the interest over the recovered amount to the tune of Rs. 68,990.50/-. However, again after fifteen years of the said recovery, a few days just before the retirement of the respondent-petitioner, he was served a Memo of Charge, fastening liability to pay 18% interest on the afore-noted amounts till 2003-04 and further interest at the Bank lending rate till 2008-09 and was directed to submit explanation within fifteen days. Despite being superannuated on 31.08.2009, the respondent-petitioner submitted a detailed explanation,

annexing relevant papers in his defence. However, without there being any adherence to the procedure meant for departmental proceeding, the penalty order came to be passed on 25.06.2012, which in the humble submission of the respondent-petitioner, had never been served upon him.

7. Learned counsel for the respondent-petitioner further contended that the entire departmental proceeding was a sham, without there being appointment of any Presenting Officer and the Enquiry Officer himself acted as prosecutor. Neither any evidence in support of the charge(s) has been adduced nor any witness has been examined. All the more, before passing the impugned order of penalty, the respondent-petitioner was not even served with second show-cause. Adverting to the Letter No. 12718 dated 18.10.2016 issued by the Managing Director, BSFC and the reasoned order as contained in Memo No. 7311 dated 03.10.2023, it was further submitted that irrespective of the fact that the respondent-petitioner is found entitled to the tune of Rs. 12,84,284/-, he has been paid only Rs. 7,61,876/- without any interest thereof and the rest due amount of Rs. 5,28,754/- towards the transportation bill has not been paid to him. Thus, he claimed the payment of due amount along with the interest thereon.

8. Having heard the rival contentions of the parties and after going through the impugned judgment, this Court is,

prima facie of the opinion, that the judgment under appeal has been passed taking note of the averments made in the counter affidavit filed on behalf of the BSFC, moreover the description of the reasons for non-payment of post retiral dues was only shown to be pending claim of the respondent-petitioner, despite the fact the petitioner came to be superannuated in the year 2009 itself. Further, the learned Single Judge also took note of the fact that after receipt of the show-cause, the respondent-petitioner had furnished his reply with specific averment that he cannot be fastened with the liability of any default, as the entire payment has already been made by the Miller and the same has been deposited to the Food Corporation of India and, as such, no loss has been caused. In such circumstances, the learned Single Judge had directed to ensure the payment of all the retiral dues of the respondent-petitioner along with the interest, as the issue of post retirment benefit(s) cannot be kept in abeyance for a long period.

9. Now coming to the Office Order contained in Memo No. 5322 dated 25.06.2012 which is put to challenge in C.W.J.C. No. 21266 of 2019; apart from the same being non-speaking, it has been passed in respect of the recovered amount for the alleged shortage of food grains during the posting of the writ-petitioner in the year 1979 to 1993 and, as such, the Memo of Charge, without there being any specific allegation is apart

from being vague, is wholly defective and not sustainable.

10. It is further to be noted that whatever the shortage of food grains amount was, the same had already been recovered with interest of Rs. 68,990.50/- from the salary of the writ-petitioner and admittedly the same has not been challenged in any proceeding or at any court of law. However, for the same cause of action, there cannot be any reason or occasion to start a fresh proceeding against the writ-petitioner after fifteen years, which appears to be actuated with extraneous considerations. Moreover, the charge is so cryptic, vague and not sustainable in absence of any rules/regulation authorizing the Corporation to recover any due amount @ 18%, that too when the said amount has already been recovered fifteen years ago with adequate interest. Further, the order of punishment dated 25.06.2012 does not reflect any consideration of the explanation furnished by the writ-petitioner nor is there a finding as to how the charge(s) stand proved, in absence of any rules/regulation authorizing the Corporation to realize the interest @18%, the date on which the recovery was made. There are various other irregularities and shortcomings in the departmental proceeding, which has been raised by the writ-petitioner, but the same could not be responded satisfactorily.

11. In view of the aforesaid facts, the impugned order as contained in Memo No. 5322 dated 25.06.2012 is held

to be not sustainable and hereby quashed.

12. The fact of imposition of punishment could not be brought to the knowledge of the learned Single Judge, is the contention of the appellants-Corporation. In any view of the matter, this Court does not find any error in the impugned judgment, directing payment of admissible retiral dues. Nonetheless, this Court finds that the entire departmental proceeding was wholly without jurisdiction, inasmuch as second penalty based on same cause of action would amount to double jeopardy, and thus order of punishment came to be set aside and, as such, in view of the aforenoted facts, withholding of any retiral dues and the culpable delay in settlement and disbursement thereof was unjustified and it must be visited with 5% interest over the delayed payment till actual payment is made.

13. Well settled it is that the pension/gratuity is no longer a bounty payable gratuitously by the employer to its employee, rather employees earn these benefits by virtue of continuous and unblemished service. All the more, right to receive pension has been held to be a right to property protected under Article 300A of the Constitution of India as mandated by the Apex Court.

14. In the aforesaid circumstances, the interest payable to the respondent-petitioner in terms of the impugned

judgment dated 03.11.2017 is modified to the extent that the same shall be payable to the respondent-petitioner w.e.f. the date of his superannuation till actual payment is made. The writ petitioner shall also be paid the other remaining admissible due amount, found payable in terms of the order of the Managing Director, B.S.F.C., as contained in Memo No. 7311 dated 03.10.2023 forthwith.

15. Accordingly, the Letters Patent Appeal stands disposed off with certain modifications indicated hereinabove and the writ petition stands allowed with the afore-noted direction.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
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