IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11313 of 2023

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Om Prakash S/o Late R.K. Lal, R/o Flat No. 306, S.S. Vihar Apartment (South of Railway Super Speciality Hospital, Karbigahia, P.O.-GPO, PS-Jakkanpur, District-Patna, Bihar-800001.

... ... Petitioner/s

Versus

1. The State of Bihar .

2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

3. The Accountant General (A and E), Bihar, Birchand Patel Path, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.P.N. Sahi, Sr. Advocate
		Ms.Roona, Advocate
		Mr. Amit Anand, Advocate
For the State	:	Mr.P.K. Verma (AAG3)
For the Accountant General:		Mrs. Ritika Rani, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-08-2024

The petitioner is a retired Judicial Officer, who was before this Court seeking pensionary benefits including difference of un-utilized earned leave and DCRG on account of revision of salary and pension of judicial officers w.e.f 01.01.2016 in terms of Annexure-12 notification dated

28.09.2022. The petitioner was then confronted with a counter affidavit seeking recovery of the excess amounts paid by reason of the provisional revision in pension, not having been reckoned for the purpose of disbursement of salary, in a post he was occupying after retirement. The total recovery sought for is Rs.40,03,204/-.

2. The petitioner joined the Bihar Judicial Service as Munsif on 14.03.1984 and in course of time he was promoted to the post of District Judge, Higher Judicial Service. He retired from the Higher Judicial Service on 30.06.2016 and his basic pension was as seen from Annexure-2. The petitioner was then appointed as State Information Commissioner, Patna vide Annexure-3 and he took charge as per Annexure-4. The appointment after retirement was a fresh appointment for a term of five years or till the age of 65 years whichever is earlier. In fixing the pay and emoluments of the post of State Information Commissioner, the pension including DA paid to the petitioner, by the State, by virtue of his service spent in judicial service, was to be reckoned and deducted. The Accountant General had issued the pay-slip as per Annexure-6 and 7 deducting such pension applicable to

him.

3. Later, there was a provisional revision of pension which was duly intimated to the office of the Accountant General by Annexure-9 dated 14.11.2017. However, the pay-slip of the petitioner was not amended accordingly. The petitioner continued to be paid the same emoluments, in the reappointed post, without reckoning the revision in pension. Later, by passage of time he also vacated the office of the State Information Commissioner. Subsequently, there was a revision of emoluments of the Judicial Officers applicable from 01.01.2016 and the notification at Annexure-12 and 13 were issued. There was a consequential revision in the pension of the petitioner also and the petitioner was also entitled to a revision of pay while he was in service after 01.01.2016 up to his retirement. The petitioner also has claimed for higher amounts by way of death-cum-retirement gratuity and leave encashment. The petitioner by the above writ petition claimed release of the additional amounts due as the revision of pay and emoluments, death-cum-retirement gratuity, leave encashment and pension. Then, he was confronted with the contention of excess payment having been made by reason only of the

Accountant General having not reckoned his revision of pension, despite his having intimated it.

4. Mr. P.N. Shahi, learned Senior Counsel appearing for the petitioner has pointed out that the petitioner was not at a fault and the Accountant General's Office in their counter affidavit has admitted that Annexure-9 was received by them. The petitioner is now old and ailing and suffering from a debilitating illness. The petitioner's medical bills are itself heavy and a recovery at this stage would put the petitioner into unnecessary harassment.

5. Mr. P.K. Verma learned Additional Advocate General appearing for the State, however, has contended that the amounts paid in excess are to be recovered which was supported by Mrs. Ritika Rani, learned Counsel appearing for the Accountant General.

6. Admittedly, the amounts due as of now as per the annexure produced by the Accountant General alongwith the second supplementary counter affidavit dated 01.05.2024 is Rs. 40,03,804/-. The said amounts have been paid to the petitioner over a period of time and the petitioner has also paid income tax. The income tax paid by him; the emoluments

being in the higher bracket, would be 30 per cent. Thirty per cent of Rs. 40,03,804/- will come to Rs. 12,01,141.20/- as was argued by the learned Senior Counsel for the petitioner. The petitioner has intimated the revision of pension at the appropriate time to the Accountant General's Office and the same is accepted in the counter affidavit. In such circumstance, while the petitioner is called upon to refund the amounts, he cannot be directed to refund the Income Tax paid by him. The 30 per cent Income Tax paid by him has to be deduced from the total demand, which would result in a balance of Rs. 28,02,662.80/-. The petitioner has received an amount of Rs. 7,58,000/- by way of DCRG and leave encashment which the petitioner submits he would deposit in the Office of the Accountant General within a period of one month. The balance would be Rs. 20,44,662.80/- which the petitioner submits could be recovered from his pension as monthly installments.

7. While recovery is made from the pension, of amounts paid in excess, by reason only of default of the Office of the Accountant General, it has to comply with Section 60 of the Code of Civil Procedure. Salary which also takes in pension, to the extent of the first thousand rupees and

two thirds of the remainder has to be excluded from recovery, in execution of any decree other than a decree for maintenance. Civil Procedure Code is not applicable to writ proceedings but it is trite that the principles therein, can be taken as guidelines and the equitable nature of the provision, persuades this Court to direct the Accountant General's Office to deduct only one third of the pension after the first thousand rupees is exempted. The *proviso* to Section 60(i) of the Code of Civil Procedure also mandates that such recovery from salary can be continued only for two years and then there should be a holiday of one year and after a further recovery for one year there shall not be any further recovery. The recovery from the pension as directed by us hence, again going by the equitable principles of Section 60 of the Code of Civil Procedure can only be continued for three years with a holiday of one year, after two years. The petitioner in the above case submits that he would make the payment in a continuous period of three years. In such circumstance, there shall be a direction to the Office of the Accountant General to deduct the pension of the petitioner as directed herein for a period of 36 months and not to proceed with any recovery after the said 36 months.

8. The writ petition is partly allowed with the above directions.

(K. Vinod Chandran, CJ)

Partha Sarthy, J:

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.08.2024
Transmission Date	NA