IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1391 of 2023
In
Civil Writ Jurisdiction Case No.9065 of 2023

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Prasidh Kumar Singh son of Late Sita Ram Singh, Resident of Dr. Narayan Prasad Lane, Near Sulabh Shauchalaya, P.O. Mahendru, P.S. Sultanganj, District Patna.

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Additional Secretary, Finance Department, Government of Bihar.
2. The Additional Secretary, Finance Department, Government of Bihar, Old Secretariat Campus, Bihar, Patna-1.
3. The Deputy Secretary Finance Department, Government of Bihar, Old Secretariat Campus, Bihar, Patna-1.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Ajit Kumar Singh, Adv.
For the Respondent/s : Mr.Addl. Advocate General 13

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)
Date : 10-04-2024

Heard the parties.

2. The challenge in the present Letters Patent Appeal is made to an order of this Court dated 31.08.2023, passed by the learned Single Judge in CWJC No. 9065 of 2023, whereby the claim of the writ petitioner-appellant herein for interest over the delayed payment of retiral benefits/dues has not been acceded to and further the Court observed that the petitioner having two wives, he will resolve the dispute with respect to entitlement of his first wife and second wife in accordance with

law by availing appropriate legal remedy before the competent civil court or he will abide by the Government circular in this regard.

3. The facts of the present case are in a narrow compass. The writ petitioner was initially appointed as an Assistant on 24.07.1984 in the Department of Personnel and Administrative Reforms, Government of Bihar at Patna. Having discharged unblemished service on different posts, finally the petitioner superannuated on 31.01.2018 from the post of Under Secretary, Finance Department, Government of Bihar. Despite having rendered more than 33 years of satisfactory service when the petitioner was not being accorded his due retiral benefits, he moved before this Court in CWJC No. 19861 of 2018 for payment of all his due retiral benefits including commutation of pension @ 40% and monthly pension along with interest over the delayed payment.

4. During the pendency of the afore-noted writ petition, the respondent- State officials sanctioned the substantive amount of retiral dues as well as arrears of pension which came to Rs. 62,17,399/-. However, no interest over the due amount has been paid, despite the fact that the payment has been made after a delay of almost five years. When the

aforesaid fact has been brought to the official respondents, they have assured that the interest shall be calculated and the same shall be paid in future and, thus, on the assurance made by the respondent authorities, ultimately the writ petition came to be withdrawn on 17.11.2022.

5. Learned counsel for the appellant, adverting to the aforesaid facts, contended that despite sanction of the due retiral benefits, actual payment of retiral dues and arrears thereof has been paid to the petitioner on 31.03.2023 but without any interest over the delayed payment. The writ petitioner, on being dismayed by the apathetic attitude of the respondent officials, filed a detailed representation before the Additional Chief Secretary on 21.04.2023 with a request to ensure payment of interest over the delayed amount and reminder has also been sent but to no effect. Having found no response, the writ petitioner left with no option, again moved before this Court in CWJC No. 9065 of 2023 which came to be disposed of vide order dated 31.08.2023, impugned herein.

6. Learned counsel for the appellant, while assailing the impugned order passed by the learned Single Judge, has submitted that admittedly the writ petitioner superannuated way back on 31.01.2018 and the payment has been made after

a delay of almost five years without there being any justiciable reason and, as such, the respondent-state officials are legally obliged to pay the penal interest on the retiral benefits, paid belatedly.

7. It is further contended that the learned Single Judge completely ignored that the writ petitioner solemnized a second marriage with Meena Singh after getting proper decree of divorce on contest in Matrimonial Case No. 190 of 1998 and thus the second marriage with Meena Singh on 26.10.2007 cannot be faulted. Learned Counsel for the appellant emphasized that subsequently the first wife Priti Devi had filed Misc. Appeal No. 57 of 2010 after three years of the order/judgment in matrimonial case which was finally disposed of vide order dated 17th August, 2011. The learned Court while disposing of the Miscellaneous Appeal though set aside the decree under appeal but categorically directed that both the parties shall live separately and shall not interfere with each other in their private life. The first wife has been directed that she neither insist nor interfere with the management of the property owned by respondent no. 1 and further the writ petitioner-husband was directed to ensure payment of a consolidated amount of Rs. 10,000/- per month to the appellant

till she is alive with the provision that the amount shall be increased by 10% every five years. It was further made clear by the learned Court that the aforesaid maintenance amount shall be paid by the husband even if he superannuates from service. In the event, the wife outlives the husband then 100% family pension would be payable to the first wife, in order to make this arrangement more workable, was the further direction.

8. Referring to the aforesaid facts, learned Counsel for the appellant thus contended that be that as it may, he has been discharging his obligation in making regular amount of maintenance to the first wife and there has never been any complaint of non-compliance of the order of the Hon'ble Court and, as such, this cannot be a ground of refusal to ensure payment of interest over the delayed retiral benefits/dues.

9. On the other hand learned Advocate representing the State officials submitted that the delay was caused in making payment of retiral benefits owing to slackness and indolent attitude on the part of the appellant. In fact, the appellant had deserted his first wife and had solemnized marriage to another lady after getting a decree of divorce, compelling the first wife to file Miscellaneous Appeal, where the Hon'ble Court had set aside the judgment and decree of

divorce granted in favour of the writ petitioner-appellant. It is further contended that although the petitioner has submitted his pension papers but he failed to furnish the name of his first wife namely, Smt. Priti Devi, rather he furnished the name of the second wife Smt. Meena Singh and despite repeated requests to furnish the name of his first wife by issuing several letters, the same has not been done. In such a situation, the respondents sought opinion from the Law Department, whereupon the writ petitioner after much persuasion has submitted the amended pension papers vide letter dated 25.02.2022, thus accordingly the pensionary benefits/due amount of the writ petitioner was sanctioned after getting approval from the Finance Department, Government of Bihar.

10. Having carefully considered the rival submissions made on behalf of the learned Advocates for the respective parties and after perusal of the materials available on record, especially the order passed by the Principal Judge, Family Court as well as this Court, *prima facie*, we find that the writ petitioner has filed Maintenance Case No. 190 of 1998 which finally came to be decreed on contest in favour of the writ petitioner vide order dated 13.12.2006. It is the case of the writ petitioner that thereafter he solemnized second marriage with

Meena Singh on 26th October, 2007, which fact has never been refuted by any of the parties and thus the second marriage of the writ petitioner cannot be said to be illegal.

11. The afore-noted order dated 13.12.2006 passed by the learned Principal Judge, Family Court, Patna was put to challenge by the first wife, Smt. Priti Devi in Misc. Appeal No. 57 of 2010, admittedly after three years. The learned Division Bench in the Miscellaneous Appeal made sincere efforts to reconcile the matter between the parties but the same was fruitful and as such the learned Court came to the conclusion that the husband is adamant in rejecting the claim of his first wife or to live with her. The Court found that it cannot direct for any reconciliation or force upon the husband to keep the wife with him. Finally, the Division Bench considering the facts and circumstances of the case disposed of the miscellaneous appeal with certain directions after setting aside the judgment and decree under appeal. Indubitably, the issue with regard to the first and second wife had been set at rest by the order dated 17.08.2011.

12. Once the dispute between the writ petitioner and the first wife came to be resolved by an order of this Court in Misc. Appeal No. 57 of 2010, any order insisting the writ

petitioner to resolve the dispute with respect to entitlement of his first wife and second wife in accordance with law by availing appropriate legal remedy before the competent civil court shall certainly tantamount to recasting or review of the order already passed by the learned Division Bench in Miscellaneous Appeal, which, in the opinion of this Court, is not warranted.

13. Nevertheless, the Government employee shall always abide by the Government circulars regulating his service conditions, which condition certainly includes the rules/provisions dealing with retiral benefits. However, this Court cannot lose sight of the fact that the writ petitioner, the erstwhile government employee had claimed for his due retiral benefits and any delay in making payment of retiral dues to the petitioner, who has had unblemished service career, cannot be countenanced. The dispute between the petitioner and his first wife cannot be relied on by the Government to delay his retiral benefits. Payment of family pension need not be ascertained when the pensioner is alive.

14. It would be worth observing that the right to receive pension has been held to be a right to property protected under Article 300A of the Constitution of India and

the issue with regard to interest over the delayed payment of post retiral benefits has been dealt with by the Hon'ble Apex Court in various cases. In the case of ***D.D. Tewari (dead) through Legal Representatives Vs. Uttar Haryan Bijli Vitran Nigam Ltd, (2014) 8 SCC 894***, the Apex Court held that denial of interest over the delayed payment of due pension and gratuity would cause miscarriage of justice. The Hon'ble Supreme Court emphasizing the decision of the ***State of Kerala vs. Padnabham Nayar [(1985) 1 SCC 429],*** found that the principle laid down in the said case still holds good insofar as according the interest on the delayed payment to the employee is concerned "[the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment [to the employees]".

15. It would also be relevant to observe that admittedly the writ petitioner superannuated on 31.01.2018 and thus he became entitled to receive all the reitral benefits on the

date of his superannuation and if any amount for which the writ petitioner was entitled is not paid and kept in the Government coffer certainly the said amount earned interest at least at the bank rate, till the payment is made.

16. In view of the facts and circumstances, this Court finds substance in the present appeal. Accordingly, the impugned order dated 31.08.2023 passed in CWJC No. 9065 of 2023 stands set aside. The respondent State is directed to ensure payment of interest @ 6% over the amount, belatedly paid to the petitioner and did not carry any statutory interest, from one month after his superannuation till the actual payment was made.

17. The Letters Patent Appeal stands allowed. There shall be no order as to costs.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
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