

(2017) 11 PAT CK 0016
In the Patna High Court
Case No : 6969 of 2016

Arjun Kumar, Son of Shri Ram Chandra Prasad
Vs

APPELLANT

The State of Bihar

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

[All India Services \(Death-Cum-Retirement Benefits\) Rules, 1958](#),
[Rule 16](#)

Citation : (2017) 11 PAT CK 0016

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Advocate : Brisketu Sharan Pandey, Ram Yash Singh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner; State and the Accountant General.

2. The petitioner has moved this Court for the following reliefs:

"i) For the direction to the respondents authorities to pay suitable interest on the post retiral benefits including the provident fund, gratuity and other benefits including leave encashment for the period 2003-04 until 2012-13 during which the petitioner was constrained to litigate owing to erroneous interpretation of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules 1958 by the respondents.

ii) For declaration that the respondents have wrongly withheld the retiral dues of the petitioner from 2003 until 2010 when the pension was finally fixed by the respondents.

iii) For direction upon the respondents that the petitioner be paid suitable

statutory interest as he was entitled of timely payment/disbursement of all post retiral benefit and was only paid in the year 2010 onwards much later after the law having being settled in that regard.

iv) The Hon''ble Court may any other order/orders which deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience".

3. In essence, the prayer is for payment of interest

on the delayed retiral benefits paid to the petitioner.

4. Learned counsel for the petitioner submitted that

the petitioner had opted for voluntary retirement from the Indian

Forest Service in the year 2003 but the same was wrongly rejected by

the State Government in January, 2004 against which he moved

before the Central Administrative Tribunal, Patna Bench in O.A. No.

183 of 2007 and the same was dismissed by order dated 06.05.2008.

Being aggrieved, he moved in C.W.J.C. No. 9909 of 2008 and a

Division Bench of this Court by order dated 23.12.2008 has held that

resignation of the petitioner had to be accepted and has further

directed that the retiral benefits to which he was entitled be settled

and paid to him at an early date. Learned counsel submitted that

thereafter by order dated 08.09.2009, the State Government had

accepted the request for voluntary retirement of the petitioner with

effect from 01.06.2003, but the payment having been made in the

year 2009 onwards, he is entitled to delay for the period the amount

remained unpaid. In support of the contention, learned counsel has

relied upon the decision of the Hon''ble Supreme Court in the case of

D. D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd . reported

as (2014) 8 SCC 894 as well as of this Court in the case of Shyam

Sundar Prasad vs. State of Bihar reported as 2017 (1) PLJR 960

and also Chandrabilas Sharma vs. State of Bihar reported as 2017

(2) PLJR 1.

5. Having heard learned counsel for the parties, the

Court is not inclined to interfere in the matter. The primary reason for not doing so is the fact that in the earlier round of litigation before the Central Administrative Tribunal on the point of rejection of his request for voluntary retirement, the case was dismissed and a Division Bench of this Court had reversed the same by order dated 23.12.2008. Thus, the issue of the petitioner being allowed to voluntary retire was still sub-judice before the Court and has finally fructified in favour of the petitioner by order dated 23.12.2008. In fact, in the first round the issue was decided against the petitioner by the Central Administrative Tribunal. Thus, no fault or laches can be attributed to the respondents for not having given the post retiral dues of the petitioner, as, at least till 23.12.2008, the issue whether the petitioner would be considered to have voluntarily retired or not was still unclear. This is one part of the matter. The other equally important aspect is that in the order of the Division Bench dated 23.12.2008, it has been held that the petitioner is entitled to retiral benefits in terms of the Rules and that the same be settled and paid to him at an early date. Thus, when the Division Bench itself has directed for payment of retiral benefits to the petitioner at an early date, the issue of payment of interest was required to be raised before that very Bench at the relevant time, and the same not having been done cannot be considered by this Court, moreso, for the reason that though the Division Bench had directed for settlement and payment of retiral benefits of the petitioner, but had only observed that the same be done at an early date. Pursuant thereto, the resignation of the petitioner being accepted by a formal order dated 08.09.2009 and payment of his dues starting thereafter, cannot be said to be of a nature which would entail payment of interest. As far as the judgments relied upon by learned counsel for the petitioner with regard to payment of interest on the delay, the Court finds that the

foundational facts in those cases were quite different to that in the present case. In the said cases, the persons had superannuated and as a matter of right, without there being any fault or laches of those petitioners, payment not having been made for a long period, the Court had directed for payment of interest. In the present case, till December, 2008 the acceptance of the resignation tendered by the petitioner voluntary retired was still hanging fire. Thus, there is no similarity between in the facts of those cases to the facts of the present case.

6. In view thereof, the writ petition stands dismissed.

7. It goes without saying that the petitioner may file representation before the authority concerned for consideration, but the decision on the same shall not be amenable to judicial review in light of the discussions made in this order, since, at the cost of repetition, the matter relating to payment of retiral benefits in terms of the earlier Division Bench order of this Court dated 23.12.2008, which has not given any directions for payment of interest and has rather directed that retiral benefits be settled and paid at an early date, cannot be gone behind, interfered with or modified in any manner.