

(2017) 11 PAT CK 0007
In the Patna High Court
Case No : 402 of 2017

Dinesh Chandra Sinha, S/o Late Kamla Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-11-2017

Acts Referred:

Citation : (2017) 11 PAT CK 0007

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Advocate : Ajay Nandan Sahay, ?Madhaw Prasad Yadav, Arvind Kumar

Final Decision : Disposed off

Judgement

1. Heard learned counsel for the petitioner and the State.
2. Learned counsel for the petitioner is directed to implead the Senior Treasury Officer, Kaimur at Bhabua as respondent no. 9 and the District Programme Officer (Establishment), Kaimur at Bhabua as respondent no. 10. Let necessary correction be made in the cause title of the writ petition by learned counsel for the petitioner during the course of the day.
3. In terms of order dated 13.10.2017, the present District Programme Officer, Kaimur is present. However, a statement is made that he has joined on 30th October, 2017 and thus, was not the concerned officer, who had made a wrong statement in the affidavit filed by him in this proceeding before the Court for which personal appearance had been directed.

4. A show cause has been filed on his behalf in which apology has been tendered and it has been explained that under some misconception, it was thought that the amount was paid though at that time, only recommendation had been made for payment.

5. Be that as it may, since the present incumbent is not the person who has filed the affidavit, in which the wrong statement with regard to payment having been made to the petitioner has been made, the Court does not find any fault on the part of the present incumbent namely, Mr. Surya Narain, the present District Programme Officer (Establishment), Kaimur. Accordingly, he is exonerated.

6. However, as the person who has filed the affidavit in which admittedly wrong statement has been made on affidavit, the Court deems it appropriate to refer the matter to the Principal Secretary, Education Department, Government of Bihar (respondent no. 2) to ensure that appropriate action is taken against Mr. Deo Bind Kumar Singh, who the Court is informed is now posted as District Programme Officer, Samastipur, for having made a patently wrong statement on oath before the Court. Learned counsel for the State shall inform the respondent no. 2 with regard to the present order.

7. Coming to the merits of the matter, the reason why retiral benefits of the petitioner were not being paid to him was that under the head of building construction, the amount having been drawn was Rs. 43,441/- in excess of the work which has been found to be completed of the building and thus, as per the State respondents, the said amount is due from the petitioner. It has further been contended that in December, 2016 itself, the authorities had given an option to the petitioner either to repay the amount or in the alternative agree to adjustment from his post retiral benefits. Learned counsel for the petitioner submitted that in his rejoinder, he has

agreed for adjustment of the amount, subject to verification of the facts.

8. A letter has been produced before the Court today bearing No. 1470 dated 02.11.2017 of the present District Programme Officer (Establishment), Kaimur to the Senior Treasury Officer, Kaimur, in which it has been requested to pay the retiral dues of the petitioner after withholding an amount of Rs. 59,441/-, which is said to be on account of the principal Rs. 43,441/- and interest of Rs. 16,000/-.

9. The Court finds that such stand of the respondent authorities is not correct, for the reason that on the day the petitioner superannuated, all post retiral benefits were lying with the State authorities and thus on that very date, an amount much more than what was outstanding was still lying with the State authorities. Thus, there cannot be any question of the amount carrying any interest against the petitioner and at best, it can only be presumed, that an amount of Rs. 43,441/- is outstanding against the petitioner, subject to adjustment or the petitioner being able to explain that the said amount has also been spent either on construction or for the purchase of materials for construction.

10. Thus, the Court holds that nothing beyond Rs. 43,441/- can be withheld against the petitioner and the said amount shall not carry any interest for the reason, as stated earlier, the entire post retiral benefits/dues payable to the petitioner were lying with the State and thus, it would be deemed that on the same day, only the amount which was outstanding, could have been adjusted, in accordance with law and after giving an opportunity to explain to the petitioner and after completing the legal formalities. Thus, the officer present before the Court shall send a fresh letter to the Senior Treasury Officer, Kaimur to withhold only an amount of Rs. 43,441/-

and pay the rest amount.

11. Let the same be done within one week from today.

Thereafter, the Senior Treasury Officer, Kaimur is directed to ensure that all admissible retiral dues of the petitioner are paid after withholding an amount of Rs. 43,441/-. The petitioner shall be at liberty to approach the competent authority in the matter of satisfying the authorities with regard to the amount withheld. Subject to the result of the same, the amount of Rs. 43,441/-, which is withheld shall either be paid to the petitioner or any amount thereof and rest shall be deemed to be adjusted on account of any unexplained amount, which is held outstanding against the petitioner, after such exercise. In the said exercise, the petitioner shall be given due and adequate opportunity of hearing.

12. The respondent no. 9 shall ensure that the admitted dues of the petitioner, after withholding an amount of Rs. 43,441/- is paid to him within two weeks from the date of receipt of communication from the District Programme Officer, Kaimur at Bhabua, subject to the petitioner complying with all the required formalities. The petitioner shall also serve a copy of this order on respondent no. 9 within one week from today.

13. The writ petition stands disposed off in the aforementioned terms.

14. Personal appearance of the officer stands dispensed with.