(2021) 07 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21620 Of 2019

Harihar Singh APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 19-07-2021

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2021) 07 PAT CK 0071

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Anirudh Kumar Verma, Archana Meenakshee, Nikesh Kumar

Final Decision : Allowed

Judgement

1. This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. While working against the post of Road Sarkar in the office of Zila Parishad, Aurangabad, the petitioner retired from service with effect from

31.03.2019 on attaining the age of his superannuation. He has filed this writ application seeking direction to the respondent no. 3 for payment of his

post retiral dues against General Provident Fund amount in part, gratuity, cash equivalent to un-utilized earned leave and other admissible benefits

consequent upon implementation of 6th and 7th pay revisions, with statutory interest.

3. A counter affidavit has been filed on behalf of Zila Parishad wherein it has been stated, inter alia, that during the course of an audit conducted in

2019, a sum of Rs.14,41,293/- was found to be outstanding against the advance which was made to the petitioner for execution of certain works. The

statement showing position of advance outstanding against him as on

31.03.2013 has been annexed as Annexure-B to the counter affidavit from which it transpires that advance outstanding against the petitioner as on 01.04.2012 was found to be Rs.14,49,523/- out of which a sum of Rs.8,230/- was adjusted during financial year 2011-12 and 2012-13. Accordingly, it is the case of Zila Parishad that the said sum of Rs.14,41,293/- remained outstanding against the petitioner as on 31.03.2013. As has been noticed hereinabove, the petitioner retired six years thereafter. Nearly one year after the superannuation of the petitioner, the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Aurangabad (respondent no. 3) vide letter no. 180 dated 16.03.2020 is said to have asked the petitioner to deposit the said outstanding amount of Rs.14,41,293. The petitioner, it is stated, responded to the said communication mentioning therein that the bills had already been submitted by him earlier for adjustment but the same had not been done by the Accountant and the Assistant of Zila Parishad, Aurangabad. It is also stated in the counter affidavit that the petitioner was asked to state clearly as to when and where he had submitted the bills so that action could be taken for its adjustment failing which it would be deemed that the bills had not been submitted by him earlier and the outstanding dues taken as advance shall be realized from his retiral benefits.

4. The sum and substance of the case of the respondent Zila Parishad is that because of non-adjustment of the outstanding advance of Rs.14,41,293/- the petitioner has not been paid his all retiral benefits. It has, however, been stated that a sum of Rs.5,70,000/- has been deposited in the petitionerâ??s account against his provident fund entitlement. It is noteworthy that there is no scheme of monthly pension in Zila Parishad. In the reply filed on behalf of the petitioner to the counter affidavit of Zila Parishad, it has been admitted that the provident fund amount has been paid to the petitioner.

5. It is curious to note from the stand of the respondents Zila Parishad itself that though the said outstanding advanced was noticed in an audit conducted in 2013, evidently no serious effort was made either in the direction of adjustment of the said amount, if the work in question was executed and bills were duly submitted by the petitioner or any departmental action against the petitioner. The Court does not find any explanation on record for such lapse on the part of Zila Parishad. If according to the respondents there was

lapse on the part of the petitioner because of which the outstanding

advance could not be adjusted, they were well within their rights to have taken action against the petitioner. The respondents allowed the petitioner to

retire without seeking any explanation from him and conducting any enquiry in relation to the advance pending against him. As a matter of fact, no

action at all appears to have been taken by the respondents for adjustment/ recovery of the amount in question in accordance with law, except for

withholding the entitlement of the petitioner against various heads which were payable to him before/after his superannuation.

6. Such action of the respondents without complying with any procedure in conformity with the requirement of principles of natural justice cannot be

approved by this Court. Apparently, the decision of the respondent to withhold the amount which the petitioner is entitled to consequent upon is

retirement is unilateral, which is unsustainable.

7. Accordingly, for the reasons aforesaid, in my opinion, a case for interference in exercise power of judicial review under Article 226 of the

Constitution of India is made out. The respondent no. 3 is directed to ensure that the petitioner is paid all his admissible entitlements within a period of

three months from the date of receipt/production of a copy of this order.

8. It will however be open for the respondents to take steps for adjustment of the advance which had remained outstanding, as disclosed in the counter

affidavit. It goes without saying that the respondents shall also be at liberty to take steps for recovery of the amount from the petitioner, if not adjusted,

through certificate proceeding under the provisions of Bihar Public Demand Recovery Act, 1914.

9. This application is allowed with the aforesaid observations and directions.

