

(2023) 03 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16600 Of 2017

Nawal Kishore Prasad

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Bihar Pension Rules, 1950 — Section 43(b)

Citation : (2023) 03 PAT CK 0081

Hon'ble Judges : Purnendu Singh, J

Bench : Single Bench

Advocate : Rabindra Prasad Singh, S. Azam, Prem Ranjan Raj, Arun Kumar Arun

Final Decision : Allowed

Judgement

1. Heard Mr. Rabindra Prasad Singh, learned Counsel appearing on behalf of the petitioner; Mr. Prem Ranjan Raj, learned A.C. to S.C.-7 appearing on behalf of the State and Mr. Arun Kumar Arun, learned Counsel appearing on behalf of the Accountant General.

2. Learned Counsel appearing on behalf of the petitioner informs this Court that all the retiral dues have been paid to the petitioner and same fact has been recorded by this Court in the order dated 05.11.2014 passed in C.W.J.C. No. 11298 of 2011, however, the writ court had passed order in absence of the Counsel for the petitioner, the petitioner had preferred Letter Patent Appeal No. 272 of 2015 against the order dated 05.11.2014 which was dismissed as the aspect of the recovery was not an issue before the Writ Court and in appeal the petitioner cannot make such challenge. Learned Counsel further submitted that in view of the order dated 28.06.2017 passed in Letters Patent Appeal No. 272 of 2015, the petitioner has preferred the present writ petition against the order of recovery of Rs. 5,09,915/-. Such recovery is illegal and in support of his contention he has referred to Page 6, sub-paragraph 4 of the paragraph No.7 of the counter affidavit filed on behalf of the Respondent Nos. 1 to 5 in which a statement has been made to recover an amount of Rs. 3,40,719/- on account of

shortage of books in addition to that Rs. 35,627/-, Rs. 20,132/- and Rs. 6086/- on account of production centre, students development fund and furniture's respectively and on account of other dues Rs. 1,79,862/- have been realized from the petitioner out of entitlement of leave encashment amount which has been recovered in compliance of communication made by the Principal, Government Polytechnic College, Bhagalpur vide letter No. 227 dated 18.04.2018. Learned Counsel submitted that law is well settled that without initiating any proceeding within the period prescribed under the statute the authorities cannot recover any amount from a retired employee, who has died much after long period of 8 years from the date of his retirement that is on 31.05.2010.

3. Learned Counsel appearing on behalf of the Respondent Nos. 1 to 5 informs this Court that the specific statement has been made in counter affidavit in subparagraph No. 4 of paragraph No.7 that it is not a case that the petitioner was not aware of the amount which were required to be deposited by him on different heads particularly, on the head of shortage of books amounting to Rs. 3,40,719/- and 1,79,862/- on account of other dues out of which the petitioner having admitted that he has paid only Rs. 15,218/- and as such it is not a case that the petitioner was not informed and heard and without giving any opportunity such recovery has been made from the petitioner.

4. Heard the parties.

5. Admittedly, record reveals that all the retiral dues of the petitioner have been already paid on different heads, however, in view of a communication made by the Principal, Government Polytechnic College, Bhagalpur vide letter No. 227 of 18.04.2018 it is admitted that Rs. 3,40,719/- and Rs. 1,79,862/- have been recovered from the petitioner out of which petitioner has made payment of 15,218/- on account of such loss.

6. It is admitted by the parties that the petitioner had retired on 31.05.2010 and after delay of almost 8 years without issuing any show cause notice or any action on part of the petitioner during the period of his service against the relevant statutory rules after such a long-time cannot be realized from retired person which such shortage or misappropriation was deducted during the period of the service of the petitioner.

7. At this stage, learned Counsel appearing on behalf of the Respondent Nos. 1 to 5 refers to statement made in paragraph No. 15 of the writ petitioner that petitioner has made a specific statement that the petitioner was communicated as back in the year 2011 vide letter No. 761 dated 04.07.2011 within a period of 1 year from the date of his retirement. This Court finds it proper to reproduce paragraph No. 15 of the writ petition:

"15. That it is respectfully submitted and admitted here that the petitioner has already submitted charges as stated above to the Assisgant and/or Headlcerk or the Institution but the Respondents have detucted the retiral dues Rs. 5,09,90/-

vide letter no761 dtd 04.07.2011 after lapse of more than years after retirement which is wholly violation of Bihar CCA Rule and Bihar Pension Rules.”

8. This Court finds that no action was taken against the petitioner while he was in service in accordance with Bihar CCA Rules, 2005 and even after having issued letter No. 761 dated 04.07.2011 within the period of one year no disciplinary action was initiated against the petitioner in terms of Rule 43(b) of the Bihar Pension Rules, 1950. The authority, in absence of any penalty order having passed in accordance with law cannot at this stage recover any dues amount from the petitioner, who was a 3rd grade employee of Polytechnic College, Bhagalpur in terms of the law laid down by the Apex Court in case of State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors. reported in (2015) 4 SCC 334 which has also been relied upon in a recent judgment of the Apex Court in Thomas Daniel v. State of Kerala and Ors. reported in (2022) SCC OnLine SC 536.

9. The respondents are directed to make payment of entire retiral dues within a period of six weeks.

10. Accordingly, the present writ petition is allowed.