

G.P.J.
19.2.13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____ / of 2013

Ashutosh Chandra Saha..... Petitioner.

Versus

The State of Bihar & ors..... Respondents.

Sub:- Retirement benefit (Non Quazzated)

I N D E X

1. Petition and affidavit. 1 to 10
2. Annexure-1. Photo Copy of P.P.O. No. 428076. — 11
3. Annexure-2. Photo Copy of representation dt.
21.7.2001. — 12
4. Annexure-3. Photo Copy of order dated
13.9.2011. — 13-14
5. Annexure-4. Photo Copy of sanctioned of pension
order dated 9.9.2005. — 15
6. Annexure-5. Photo Copy of representation dt.
13.8.2012. 16-18
7. Vakalatnama

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____/ of 2013

Ashutosh Chandra Saha..... Petitioner.

Versus

The State of Bihar & ors..... Respondents.

SYNOPSIS

This writ application is being filed for issuance of an appropriate writ, order, direction to the respondents and calling upon them as to why and under what $\&$ Circumstance the retiral benefit of the petitioner is not fully paid o Calculated in defferent heads and further prays for giving direction to the respondents for statutory interest as delayed payment of retiral dues. Relevant dates and effec

Para-5 Photo Copy of P.P.O. No. 428076 petitioner superannuated on 31.1.1993.

~~XX~~
~~XX~~

21.7.2001 Petitioner filed several representation to the Concerned authority.

9.9.2005 Ist ~~XX~~ pension of the petitioner was sanctioned vide AGNO Pan 5/4161 dated 9.9.2005.

13.9.2011 The against of order of recovery from pension petitioner filed a writ application in C.W.J.C. No. ~~25~~ 3351/07 vide his order dated 13.9.2011.

13.8.2012 The petitioner filed representation before the Concerned authority on 13.8.2012.

Hence, this writ application.

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
PATNA SCORE PATNA

भारत

STAMP DUTY

00000

बिहार
JUDICIAL

COURT FEE

Rs. ≈ 0000285 ≈ 18.2.2013

S. Prasad A.C.R.
Authorization No. 2676



INDIA

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BIHAR

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. No. _____ / of 2013

In the matter of an applica
n Under Article 226 of the
Constitution of India.

And

In the matter of:-

Ashuto sh Chandra Saha, son of late Jaideo Prasad Saha,
resident of village-Telia, P. s. Banka, District-Banka.

..... Petitioner.

Versus

1. The State of Bihar.
2. The Accountant General, Bihar, Patna.
3. The Commissioner, Koshi Division Saharsa, Bihar.
4. District Welfare Officer, Madhepura, District-
Madhepura.

5. Treasury Officer, Banka..... Respondents.

To,

The Hon'ble MS. Justice Rekha M. Doshit, the Hon'ble
Chief Justice of the Hon'ble High Court of Judicature
Patna and her Companion Justices of the said Hon'ble
High Court.

The humble petition on
behalf of the above named
petitioner.

Most Respectfully Sheweth:-

1. That this writ application is being filed
for issuance of an appropriate writ, order, direction to
the respondents and Calling upon them as to why and
under what Circumstances, the retiral benefit of the
petitioner is not fully paid Calculated in different
heads and further prays for giving direction to the
respondents for statutory interest on delayed payment

of retiral dues.

2. That following substantial question of laws involved to maintain this writ application.

I. Whether the petitioner is not entitled for relief claimed ?

II. Whether the respondents are not held guilty for not granting his retiral dues ?

III. Whether the petitioner has right to get his full retiral benefits ?

IV. Whether the withholding of retiral dues is violation of right guaranteed under the Constitution of India.

V. Whether the Hon'ble Supreme Court of India has decided that pension is not bounding by the right has fully been obeyed ?

VI. Whether non payment of retiral dues amount to denial of the right.

XXX.3. That petitioner is a Citizen of India and

4.

is wellreside in your honour's Jurisdiction and is entitled to invoke the writ jurisdiction of this Hon'ble High Court.

4. That petitioner was appointed as thana welfare officer on 10.12.1957 on a fixed scale of Rs. 50/- at a he was superannuated on 31.1.1993 after Completing 35 years of satisfactory service with full satisfaction.

A photo Copy of P.P.O. No.

428070 is annexed herewith

and marked as Annexure-1 to

this writ application.

5. That it is humbly submitted that he has also qualified Hindi nothing drafting on 6.6.1962 Conducted by the department for getting promotion and higher salary and he was superannuated on 31.1.1993 and Block Welfare Officer, Madhepura.

6. That since the date of appointment, i, e, ~~22~~

5.

28.11.1957, petitioner has Completed 25 years of service on 10.2.1982 and as such petitioner became entitled for 1st and 2nd time bound Promotion in view of Government Circular but the authority Concerned has granted only 1st time bound w,e,f 1.4.1981 but petitioner was not given any ~~money~~ monetary benefit. The petitioner was also denied the 2nd time bound promotion. Petitioner has also not been granted benefit of promotion.

7. That it is pertinent to mention here that in view of letter Contained in memo No. 2098 dated 20.3.1981 issued by director, by which petitioner has been promoted on the post of Block Welfare Officer.

8. That petitioner has filed several representation before the authority Concerned for grant of 2nd time bound promotion during his service period and after retirement but no action has been taken by the authority

A photo Copy of representation dated 21.7.2001 is

6.

annexed herewith and marked

as Annexure-2 to this writ

application.

9. That it is submitted that amount of recovery from the pension was made after lapse of 13 years without any enquiry or proceeding which is fit to be set aside. When ever respondent authority submitted paper before the respondent Accountant General Bihar himself stated that no dues against the petitioner even provisional pension was stopped for five months.

10. That it is respectfully submitted that against the order of recovery from pension after lapse of 13 years has been Challenged before this Hon'ble High Court in C.W.J.C. No. 3351/2007 by virtue to order dated 13.9.2011 the order of recovery Contained in memo No. 06 dated 4.10.2006 is set aside by this Hon'ble High Court. On representation ~~being~~ being filed no order has been passed till date.

A photo Copy of order dated
13.9.2011 is annexed herewith
and marked as Annexure-3 to
this petition.

11. That it is needful to state that petitioner has not been granted increment since 1964 to till date of retirement and his arrear has not been paid to petitioner.

12. That petitioner is an old retired person having attained age of 80 years and facing starvation alongwith his entire family member due to not property assessed his salary and his retiral dues till date and is running from pillar to post to get his grievances redressed.

13. That it is very pertinent to state that petitioner was allowed to go on superannuation on 31.1.1993 a surprisingly his first pension was sanctioned vide AGM Pan 5/4161 dated 9.9.2005 after the lapse 12 years, he interest occurred due to laches Caused must be payable to

the petitioner and increment is also withhold.

Photo Copy of sanctioned of
pension order dated 9.9.2005
is annexed herewith and marked
as Annexure-4 to this petition.

14. That it is important to state here that there was no Criminal Case or departmental proceeding pending against him during his service period rather service period. In he bears on unblumished service Career.

15. That it is worthful to mention here after his retirement from service i.e, 31.11.1993 his leave encashment has not been paid till today and is constantly representing his authority but the authority concerned did not pay any heed to his grievances.

16. That after seeing no redressal of grievances the petitioner represented before the authority giving the details of his grievances stating parawise. The grievances of the petitioner is that his Death Cum Retirement gratuity and amount of Earned leave has not been

properly assessed due to which he has not properly paid
or his pension has not properly fixed.

A photo Copy of representa
on dated 13.8.2012 is anne
herewith and marked as Ann
re-5 to this petition.

17. That petitioner has got no other alternative
or efficaciously remedy them by way of filing this writ
application.

18. That petitioner has not moved before this
Hon'ble High Court against the relief Claimed.

It is therefore prayed that your lordship ma
graciously be pleased to issue notice to sho
Cause as to why the relief sought for in par
1 of writ application be not granted to peti
oner and upon show Cause being shown~~if~~ if ar
and after hearing parties pass such order/
orders as your lordship may deem fit and pro
-r in the facts and Circumstances of the Cas

And for this petitioner shall ever pray.

AFFIDAVIT

I, Ashutosh Chandra Saha, aged about 80 years, son of late Jaideo Prasad Saha, resident of village-Telis, P. S. & Distri Banka do hereby solemnly affirms and state as follows:-

1. That I am petitioner in this Case and I am well acquainted with the facts and Circumstances of the Case.
2. That the Contents of the petition and affidavit has been read over and understood by me, which are true to my knowledge.
3. That the statement made in paragraph nos. 3, 4, 5, 6, 8, 12, 13, 16, 17 and 18 are true to my knowledge and these statements made in paragraph nos. 7, 9, 11 and 15 are true to my information derived the records and rest by way of submission of this Hon'ble High Court.
4. That the annexures are true/typed/photo Copies its respective originals.

अशुतोष चन्द्र साहा

3 Annexure 1

41-11

PART - II

PPO NO. **428076**

Name of the Govt. Servant: **Ashutosh Chandra Saha** 2. Post Held

Address: **Distt. Welfare Officer, Madhepura**

Residential Address: **Vill : Telia P.O. : Barahat**
P.S. : Banka Distt: Banka

| | | | |
|------------------------------------|--|---|-----------------------------|
| Date of birth 20/01/1935 | Date of Appointment 10/12/1957 | Date of retirement 31/01/1993 | Date of death / / |
|------------------------------------|--|---|-----------------------------|

1. Nature of Pension: **Grd.** 7. Gross Qualifying service

Qualifying service: **35Y- 1W-22D**

| | | | |
|----------------------------------|--|--|-----------------------------------|
| Emol. for pension 2074 | Emoluments for F.P. Rs. 2100 | Emoluments for DCRG Rs. 2100 | Last Pay Drawn Rs. 2100 |
|----------------------------------|--|--|-----------------------------------|

Gratuity pension paid @ Rs. **0** p.m. from **01/02/1993** till date is to adjusted

Net Pension: **@ Rs. 1037/- (Rs. one thousand and thirty seven only) w.e.f. 01/02/1993**

Gratuity: **@ Rs.**

////////////////////

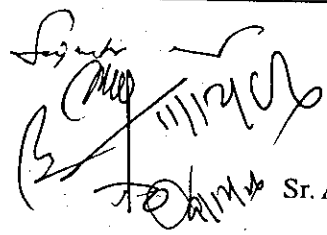
7 YRS. FROM THE D.O.D. WHICHEVER IS EARLIER AND THEREAFTER

Gratuity: **FP. @ Rs. 450/- (RS. four hundred and fifty only)**

DETAILS OF FAMILY MEMBER ELIGIBLE FOR FAMILY PENSION.

| Name | Relationship with Govt. Employee | Date of Birth | Whether Handicaped |
|-------------------|----------------------------------|---------------|--------------------|
| Radha Devi | Wife | / / | |

Paying Bank:
Account No.:


Sr. Accounts Officer/Accounts Officer

~~Annexure~~ 119

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सेवा में,

उप निदेशक कल्याण,
कोशी प्रमण्डल सहरसा ।

द्वारा- जिला कल्याण पदाधिकारी,
मधेपुरा

विषय:- सरकारी सेवा में 25 वर्ष से अवधि पूरा हो जाने पर सरकारी सेवकों को द्वितीय कालवृद्ध प्रोन्नति की स्वीकृति देने के सम्बन्ध में ।

महाशय,

उपर्युक्त विषय के सम्बन्ध में मेरा नम्र निवेदन है कि :-

1. मैंने कल्याण विभाग में दिनांक 10.12.1957 से अपना योगदान कल्याण पर्यवेक्षक पद पर दिया । तथा उक्त विभाग में कार्यरत रहते हुए दिनांक 31.01.1993 को प्रमण्डल कल्याण पदाधिकारी, मधेपुरा के पद से सेवा निवृत्त हो चुका हूँ ।
2. सरकारी सेवा में 25 वर्ष की सेवा अवधि पूर्ण होने के अन्दर प्रथम एवं द्वितीय काल वृद्ध प्रोन्नति का प्रावधान है ।
3. दिनांक 10.12.1982 को ही मेरा सेवा अवधि सरकारी सेवा में 25 वर्षों की पूरी हो जाती है।

दिनांक 1.4.81 को मुझे प्रथम कालवृद्ध प्रोन्नति की स्वीकृति मिल गयी है । अतः प्रार्थना है कि सरकारी प्रावधानानुसार मुझे 25 वर्षों की सेवा अवधि पूरी होने के फलस्वरूप द्वितीय कालवृद्ध प्रोन्नति की स्वीकृति देने की कृपा की जाय।

इसके लिये मैं आपका सदा आभारी रहूँगा।

अनुलग्नक - एक

विश्वास भाजन

प्राशुतोष चन्द्रसाहू

21-7-2001.

सेवा निवृत्त प्रमण्डल कल्याण
पदाधिकारी, मधेपुरा ।

Annexure-3.

BIHAR CIRCULAR
COURT REG
AUTH NO. SMUDAK PRACHH 2328882420
INDIA
714466
BIHAR
13

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.3351 of 2007

Ashutosh Chandra Saha, son of Jaideo Prasad Sah, resident of Village Talia, P.S. & District- Banka Petitioner
Versus

1. The State Of Bihar
2. Director, Welfare Department, Govt. Of Bihar, Patna
3. District Magistrate, Madhepura, District Madhepura
4. District Welfare Officer, Madhepura, District Madhepura
5. Treasury Officer, Banka, District- Banka
6. The Accountant General Bihar, Patna Respondents

02/ 13.09.2011

Heard learned counsel for the petitioner and the State.

2. Petitioner superannuated while serving as Block Welfare Officer, Madhepura with effect from 31.1.1993. He has filed this writ petition questioning the direction of the District Welfare Officer, Madhepura contained in Memo No. 06 dated 4.10.2006, Annexure-4 whereunder instructions have been given to the Treasury Officer, Banka to recover a sum of Rs. 55,745/- from the pension payable to the petitioner vide P.P.O. No. 428076, as the aforesaid amount was paid to the petitioner as advance which could not be adjusted during the service tenure of the petitioner.

3. It is submitted on behalf of the petitioner that aforesaid instructions have been issued even without

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asking the petitioner to submit show cause reply in the matter. In this connection, it is also submitted that aforesaid amount is not due from the petitioner.

4. This writ petition was filed on 16.3.2007 and remained pending for more than four years, but the State-respondents have not chosen to refute the statement made in the writ petition.

5. In the circumstances, I have no option, but to set aside the instructions of the District Welfare Officer, Madhepura contained in Memo No. 06 dated 4.10.2006, Annexure-4, which is, accordingly, set aside with liberty to the District Welfare Officer, Madhepura to pass fresh order after giving opportunity of hearing to the petitioner.

6. The writ petition is, accordingly, disposed of.

Arjun/

Sd/-
(V. N. Sinha, J.)

CERTIFIED TO BE TRUE PHOTO COPY
For Jotai Registrar (J) 16-9-11
Patna High Court
1979
P. K. Sinha
16.9.2011
228723

File No. **(11) PART-VII**
 (Record of Disbursement)

आशुतोष चन्द्र साह
 P.P.O No - 428076

| Month for which pension is due | Amount | | Date of Payment | Disbursing Officers | Remarks |
|--|---|-----------|-----------------|---------------------|---|
| | From | To | | | |
| (1) 01/01/02 to 31/12/02 | 30/06/02 | 4781 x 6m | 31/12/02 | 28/11/02 | Rs = 28,686 = 00 |
| (2) 01/07/02 to 31/06/03 | 31/12/02 | 4874 x 6m | 31/12/02 | 29/11/02 | Rs = 29,244 = 00 |
| (3) 01/07/03 to 31/06/04 | 31/06/03 | 4969 x 6m | 31/06/03 | 29/08/03 | Rs = 29,814 = 00 |
| (4) 01/07/04 to 30/06/04 | 31/06/03 | 5094 x 6m | 31/06/03 | 29/08/03 | Rs = 30,564 = 00 |
| (5) 01/07/04 to 31/12/04 | 30/06/04 | 5157 x 6m | 31/12/04 | 29/11/04 | Rs = 30,942 = 00 |
| (6) 01/07/04 to 31/12/04 | 31/12/04 | 5257 x 6m | 31/12/04 | 29/11/04 | Rs = 31,506 = 00 |
| (7) 01/01/05 to 30/06/05 | 30/06/05 | 5612 x 6m | 30/06/05 | 29/08/05 | Rs = 33,672 = 00 |
| (8) 01/07/05 to 31/12/05 | 31/12/05 | 5801 x 6m | 31/12/05 | 29/11/05 | Rs = 34,806 = 00 |
| (9) 01/01/06 to 30/06/06 | 30/06/06 | 5942 x 6m | 30/06/06 | 29/08/06 | Rs = 35,652 = 00 |
| (10) 01/07/06 to 30/11/06 | 30/11/06 | 6978 x 5m | 30/11/06 | 29/08/06 | Rs = 34,890 = 00 |
| Less Pw. Deducted via D.O. made for a letter dt-6/11/06. | | | | | Rs = 6,70,645 = 00 (6,70,645 = 00) (-) 4,49,185 = 00 |
| Recovery Amount Rs = 55,745/- as per order by Dist. court for office made for a letter dt-6/11/06. | | | | | Rs = 2,21,460 = 00 (2,21,460 = 00) (-) 55,745 = 00 |
| August Letter dt-6/11/06. | | | | | Rs = 1,65,715 = 00 1,65,715 = 00 |
| September | | | | | |
| October | | | | | |
| November | | | | | |
| December | A.C.B. Sanctioned vide A.G. no. 8/470/4164 dt-9/1/05 GPO No-388 (05-06) dt-9/1/05 Authority no- 0271575 Admissible Dera | | | | Rs = 34,650 = 00 |
| January | Less Pw. Dera already made | | | | Rs = NIL |
| February | | | | | Rs = 34,650 = 00 |

Dearness Allowance is payable with reference to the amount of pension before commutation.

[Signature]
 [Signature]

सेवा में,

माननीय आयुक्त महोदय,

कोशी प्रमंडल स्तरसा, बिहार.

विषय :- सेवा निवृत्त प्रबंध कल्याण पदाधिकारी मधेपुरा के सेवान्त
ताम एवं पेंशन के सुधार के संबंध में.

प्रसंग :- सेवा काल में कालबद्ध प्रोन्नतियों को न देना फलस्वरूप उचित
केतन निर्धारण न हो पाना तथा सेवा निवृत्ति के पश्चात्
उचित ताम का न मिलना एवं पेंशन मूल कम निर्धारित करना।

महाराज,

प्रसमाधीन विषयों पर आशुत हमारा आवेदन निम्न प्रकार है :-

आवेदक :- श्री आरुतोष कन्ध साहा पिता जयूदेव प्रसाद साह
ग्राम-तेछिया, पो०- बाराहा, थाना-बाँका,
जिला-बाँका.

योगदान :- 10.12.1957 योगदान पद थाना कल्याण पदाधिकारी
दुम्का, संघाल परगना।

सेवा निवृत्त :- अ-01.1993 सेवा नि०पद- प्रबंध कल्याण पदा०, मधेपुरा
कुल सेवा काल- 35 वर्ष, 01 माह, 22 दिन, पी.पी.ओ.नं. 428076.

निवेदन :-

1. जिला कल्याण पदाधिकारी मधेपुरा के ज्ञापक 06 1901
दिनांक 4.10.2006 के आलोक में 30.11.06 तक के पेंशनादि राशि
में अग्रिम अगतन 4,49,645 रुपये को काट कर शेष 2,21,460/- रुपये
में पुनः 55,745/- काट लिए गए है. यह 55,745/- रुपये की राशि
कौन सा अग्रिम राशि है. इसकी वर्गी नली की गई है.

संलग्नक :- 1,2,3,4

2. वैसी कौन सी परिस्थिति थी फिर वह परिस्थिति लाने के लिए कौन जवाब देह है कि 31.01.93 को हम सेवा निवृत्त हुए और प्रथम पेशान हमें 9.9.05 को दिया गया.

संदर्भक - 5.

3. हम ने 6.9.86 को प्रबंध कल्याण पदाधिकारी मधेपुरा के पद पर योगदानिक्या, जिज्ञा कल्याण पदाधिकारी मधेपुरा के आदेश दिनांक 11.8.87 के आशोक में सेवा पुस्त अद्यतन न हॉमि के बहाने पर 850-1360 के वेतन मान पर वेतन सुगतान का आदेश दिया गया और वेतन भी दिया गया जबकि प्रबंध कल्याण पदाधिकारी के पद का वेतनमान 1600-50-2300-60-2780 है.

संदर्भक -6,7,8,

4. मुझे 10 वर्ग की सेवा पूर्ण करने पर प्रथम काल बढ़ प्रोन्नति 10.12.67 को दिया जाना चाहिए हम इस लाभ से आज तक वंचित रह गए हैं.
5. हमको 25 वर्ग की सेवा पूर्ण करने पर द्वितीय काल बढ़ प्रोन्नति का लाभ दिया जाना चाहिए, परन्तु हमें तृतीय काल बढ़ प्रोन्नति के लाभ से वंचित रखा गया है. जो 10.12.1982 को हमें मिला चाहिए.
6. हम 10.12.67 को प्रथम काल बढ़ प्रोन्नति से वंचित रह गए फलतः मौरा 6.9.86 के वास्तविक वेतनमान 1600-50-2300-60-2780 प्रभावित हुआ है.
7. 10.12.67 से हमारे वेतन निर्धारणको सुनिश्चित किया जाना चाहिए.
8. मैं 31.01.93 को सेवा निवृत्त हो गए है और इनके सेवान्तर 1/4 का लाभ की गणना 1650 पर की गई है. इससे हमें डी.सी.आर.जी. की राशि ,इ.एल.की राशि बहुत कम मिल पाई है.

9. 10.12.67 से हमारा वेतन निर्धारण कर उचित वेतन दिया जाय।
जिससे हमारे मूल पेशान की राशि में काफी वृद्धि होगी। आज हमें
मात्र रुपये 1037 ही पेशान का मूल निर्धारित है।

10. हमारा रुपये 1037 पेशान का मूल होने के कारण 5वां वेतन
निर्धारण में मात्र 2104 रुपये का इजाफा हुआ जो एक चिन्तनीय विषय
है और जो हमारे निर्वहन के लिए अत्यल्प है।

11. हम इस मूल 341 रुपये पर उठी वेतन निर्धारण में भी अत्यल्प
मूल की वृद्धि पाने के लिए वाध्य होंगे। बिहार सरकार के द्वारा उठी
वेतन निर्धारण के लाभ पेशानधारियों को एफ.डी.नं. 820/23.9.09
के आलोक में घोषित हो चुका है।

12. 10.12.67 से हमारा उचित वेतन निर्धारण न होने के कारण
हमें मासिक वेतन 31.1.93 तक कम मिल पाया है। हमें उसका एरियर
दिया जाना सुनिश्चित किया जाय।

अतः श्रीमान से विनम्र निवेदन यह है कि हमारे आवेदन पर
पधा शीघ्र सदानुसूचित पूर्वक विचार करते हुए पदल किया जाय। मैं बहुत
कठिनाईयों का सामना कर रहा हूँ और अधिक लावारहोने पर माननीय
उच्च न्यायालय की शरण में जाने के लिए हमें वाध्य नहीं किया जाय।

दिनांक - 13-8-2012

प्रतिनिधि :-

मात्रनीय-
जिलापदाधिकारी मधेपुरा,
जिलाकल्याण पदाधिकारी मधेपुरा,
को आवश्यक कार्यार्थ प्रेषित।

संलग्नक :- कुल - 8 पेज

आपका विनित्त

प्राशुतोष चन्द्र साहा
13-8-2012

आशुतोष चन्द्र साहा

सेवा निवृत्त

प्रोकल्याण पदाधिकारी, मधेपुरा।

वर्तमानपता :- ग्राम-तेरिया, पो-बकिकर

बाराहाट, थाना-बांका, जिला-बांका।