

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8203 of 2014

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1. Yugeshwar Prasad Singh son of Late Rajendra Singh, permanent resident of village- Bahasi, P.S.- Mahua, District- Vaishali at Hajipur
 2. Surajdeo Prasad son of Late Guru Charan Ram, resident of village- Kurchi Balavpur, P.S.- Digha, District- Patna
 3. Bishwanath Roy son of Late Gopal Chandra Roy, resident of Mohalla- Gulabbagh Market, P.S.- Gandhi Maidan, District- Patna
 4. Md. Anwarul Haque Ansari @ Md. Anwarul Haque son of Late Reyazul Haque, resident of Mohalla- Fasahat Ki Maidan, P.S. -Patna City, District- Patna

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Frazer Road, Patna through its Managing Director
2. The Board of Directors, Bihar State Financial Corporation, Frazer Road, Patna through its Chairman.
3. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna
4. The Deputy Manager, Bihar State Financial Corporation, Frazer Road, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 8696 of 2014

Vibhutinatha Jha son of Late Viswanatha Jha, resident of 292, Indiralaya, Opposite Stadium, Rajendra Nagar, P.S.- Kadamkuan, District -Patna.

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Deputy Manager (P&A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 9671 of 2014

1. Smt. Shakunta Devi wife of Late Krishna Ram, resident of Mohalla- Gosain Tola near K.D.N. Path, post and P.S.-Patliputra, District- Patna (Bihar)
2. Smt. Sunita Devi daughter of Late Krishna Ram wife of Sri Manoj Kumar, resident of Mohalla- New Harnichak near Sargam Sweet, Post- Anisabad, P.S.- Gardanibagh, District- Patna Bihar
3. Sanjay Kumar



4. Anand Kumar
5. Arvind Kumar

All sons of Late Krishna Ram, resident of Mohalla- Gosain Tola near
K.D.N. Path, Post and P.S.- Patliputra, District- Patna (Bihar)

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Deputy Manager (P & A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5358 of 2017
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Upendra Lal Karn son of Late Pancheshwar Lal Das, resident of Urvashi
Apartment, New C.G. Nagar, P.S.- Patrakar Nagar, Kankarbagh, District- Patna.

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. The Consultant I/C (P&A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.8203 of 2014)

For the Petitioner/s : Mr. Ravindra Nath Dubey, Advocate

For the Respondent/s : Mr. Partha Sarthy, Advocate

: Mr. Apurva Kumar, Advocate

(In CWJC No.8696 of 2014)

For the Petitioner/s : Mr. Manik Vedsen, Advocate

: Mr. Subhash Chandra Bose, Advocate

For the Respondent/s : Mr. Y.V.Giri, Sr. Advocate

: Mr. Nikhil Kumar Agrawal, Advocate

(In CWJC No.9671 of 2014)

For the Petitioner/s : Mr. Manik Vedsen, Advocate

: Mr. Subhash Chandra Bose, Advocate

For the Respondent/s : Mr. Y.V.Giri, Sr. Advocate

: Mr. Nikhil Kumar Agrawal, Advocate

(In CWJC No.5358 of 2017)

For the Petitioner/s : Mr. Manik Vedsen, Advocate



For the Respondent/s : Mr. Subhash Chandra Bose, Advocate
: Mr. K.D.Chatterjee, Sr. Advocate
: Mr. Vinay Krishna Tripathy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 25-05-2017

These writ application nos. 8203 of 2014, 8696 of 2014, 9671 of 2014 and 5358 of 2017 have been preferred by the employees of the Bihar State Financial Corporation (for short 'the Corporation') challenging the orders passed by the Managing director of the Corporation on different dates whereby the petitioners' respective representations and the claims for balance admissible retiral benefits have been rejected, and further for a direction to the respondents to make payment of their balance retiral benefits with interest for the period of delay in making payment.

2. Since separate representations were filed before the Managing Director of the Corporation by the writ petitioners, the orders were passed by the Managing Director separately in case of each of the petitioners. However, since the issues raised in all these applications are common and the ground on which the representations are rejected are also common, the writ petitions have been heard together and are being disposed of by a common order.

3. The factual matrix of these cases are as follows:-

The State Government by its resolution dated 24.03.2005 enhanced the age of superannuation of its employees from 58 years to



60 years with effect from the date of the order.

4. The Corporation by a resolution dated 25.08.2006 also resolved to amend its regulation particularly regulation 19(1) in order to contemplate the said benefit to the employees of the Corporation.

5. In spite of the aforesaid resolution dated 25.08.2006 having been made by the Board of Directors of the Corporation, the Corporation was not giving effect to its resolution.

6. Being aggrieved by the inaction of the Corporation, the Bihar State Financial Corporation Employees Federation filed a writ petition in the representative capacity vide W.P(s). No.5777 of 2006 before the High Court of Jharkhand at Ranchi seeking direction upon the Corporation to implement the aforesaid decision of the Board of Directors of the Corporation, which was dismissed by the learned Single Judge vide order dated 12.02.2007.

7. The Bihar State Financial Corporation Employees Federation being aggrieved by the aforesaid order dated 12.02.2007 filed an appeal under clause 10 of the Letters Patent in the High Court of Jharkhand at Ranchi vide L.P.A. No.83 of 2007.

8. While the letters patent appeal was pending before the High Court of Jharkhand, the Corporation continued to superannuate its employees, who had attained 58 years of age.

9. The Bihar State Financial Corporation Employees



Federation filed an application in the pending L.P.A. No.83 of 2007, which was disposed of vide order dated 27.01.2009 whereby the Division Bench clarified that any superannuation made in the meanwhile shall be subject to the result of the appeal.

10. Subsequently, L.P.A. No.83 of 2007 was allowed by the High Court of Jharkhand vide order dated 22.04.2009. The operative portion of the order reads as under:-

“Admittedly, not only the employees of different Corporations and local bodies of the State of Bihar, but also the Corporations and other local bodies of the State of Jharkhand increased the age of superannuation of their employees from 58 years to 60 years. Although, the stand of the State Government is that because of financial position of the Corporation, sanction for increase of age of superannuation has not been given, but no materials have been brought on record to show that the financial position of the Corporation is not good. On the contrary, taking into consideration the financial position of the Corporation, the Board of Directors, which is competent authority, has taken a resolution for enhancement of age of superannuation of the employees from 58 years to 60 years. In the aforesaid premises, in our considered



opinion, the decision of the Government of Bihar of not according sanction for enhancement of age of superannuation of the employees of the Corporation is not justified and cannot be sustained in law. The learned Single Judge has not considered this aspect of the matter.

We, therefore, allow this appeal and set aside the impugned judgment passed by the learned Single Judge and direct the respondent State of Bihar to accord sanction for the enhancement of age of the employees of the Corporation within a period of thirty days from the date of receipt/production of a copy of this order.”

11. The Bihar State Financial Corporation Employees Federation thereafter filed a civil review application being Civil Review No.56 of 2009 seeking certain clarifications in the order passed on the said appeal, which was disposed of on 20.05.2009 observing as under:-

“ Hence, in the light of the order dated 22nd April, 2009, we observe that sanction for enhancement of age of the employees of the Corporation from 58 years to 60 years shall be made applicable to the employees, who attained the age of superannuation.”

12. Being aggrieved by the judgment and order passed in



L.P.A. No.83 of 2007, the Corporation filed special leave petition before the Hon'ble Supreme Court, which was dismissed in limine vide order dated 01.10.2009.

13. The employees of the Corporation, who were made to retire during the pendency of the L.P.A. and the S.L.P. filed a contempt petition before the High Court of Jharkhand at Ranchi being M.J.C. No.754 of 2009. In the said M.J.C. application while granting time to the opposite parties to file their respective show causes, the High Court of Jharkhand directed the Corporation not to retire any employee until attainment of the age of sixty years.

14. The petitioners after dismissal of the S.L.P. filed by the Corporation reported on duty by submitting their joining reports and on refusal to receive their joining reports, they sent the same by post.

15. Later on, a standing order was passed by the Corporation on 19.04.2010 whereby it was decided to enhance the age of superannuation from 58 years to 60 years with effect from 25.08.2006.

16. After issuance of the aforesaid standing order dated 19.04.2010, the petitioners were allowed to join back as they had not attained the age of 60 years and, further, they were allowed to superannuate on attaining the age of 60 years.

17. Since the writ petitioners were not paid salary for the



period they were not allowed to discharge their duty, some of them approached this Court for payment of their salary for the period they were made to superannuate on attaining the age of 58 years and their respective dates on which they were reinducted in service after resolution of the Board pursuant to the direction of the Court by filing writ petitions bearing CWJC No.1324 of 2011 and analogous cases. Those writ petitions were allowed by this Court vide order dated 29.08.2011 on the following terms:-

“The respondent-Corporation and its officials are directed to pay the salary to the petitioners for the period(s) they were kept out of the job before attaining 60 years of age. The respondent-Corporation shall calculate the amount of salary payable to each of the petitioner and authorize payment thereof in their favour within a period of eight weeks from the date of receipt/production of a copy of this order.”

18. The petitioner Vibhuti Nath Jha (CWJC No.8698 of 2014) was not a party in CWJC No.1324 of 2011 and other analogous cases. He also filed a separate writ petition being CWJC No.19316 of 2011 before this Court. After hearing the parties, the said writ petition was disposed of by this Court by order dated 04.11.2011 on the same terms in which CWJC No.1324 of 2011 and other analogous cases



were disposed of vide aforesaid order dated 29.08.2011.

19. The aforesaid order dated 29.08.2011 passed in CWJC No.1324 of 2011 and other analogous cases was challenged by the Corporation in LPA Nos.1656 of 2011 and 1816 of 2011, which were taken up together by the Division Bench of this Court and the Division Bench vide its order dated 07.09.2012 dismissed those letters patent appeals in limine. The order dated 07.09.2012 passed by the Division Bench was then challenged before the Hon'ble Supreme Court, but the Hon'ble Supreme Court also declined to interfere with the decision of the Division Bench and dismissed the Special Leave Petition.

20. Thus, as per the order passed by this Court, the Corporation was made liable to pay salary to the employees of the Corporation for the period they were kept out of job before attaining 60 years of age. The Corporation was also made liable to calculate amount of salary payable to each of the petitioners and authorize payment thereof in their favour within the period stipulated in the order passed by this Court. The order of this Court attained finality by order dated 11.01.2013 of the Hon'ble Supreme Court.

21. Accordingly, the Corporation vide its Office Order No.07 of 2012/13 bearing memo no.1012 dated 04.03.2013 took a decision whereby ex-employees of the Corporation, who were retired



at 58 years of age and attained the age of 60 years prior to the issuance of the aforesaid order of enhancement of retirement age, and such employees, who retired at the age of 58 years, but resumed their duties during intervening period were allowed admissible salary and allowances (except conveyance allowance) for the period they were out of service.

22. According to the Corporation pursuant to the aforesaid decision of the Corporation all admissible dues in the light of the order passed by this Court in **(CWJC No.1324 of 2011), Yogeshwar Prasad Singh's case** (supra) has been authorized and paid to the petitioners. However, the petitioners raised a grievance that the admissible dues were not paid to them and, thus, they made their respective representations before the authorities of the Corporation, which have been rejected by order passed on different dates either by the Managing Director of the Corporation or by the Deputy Manager (P and A). Being aggrieved by the dismissal of their representations, the petitioners have filed these writ petitions before this Court.

23. Though in different writ petitions several prayers have been made on behalf of the petitioners, while arguing the cases, learned counsel for the petitioners confined their prayer in respect of two claims made by them, which were rejected by the authorities of the Corporation. They are: (i) payment of lesser amount of leave



encashment and, (ii) payment of lesser amount of gratuity.

24. Learned counsel appearing on behalf of the petitioners submitted that when the petitioners were forced to retire prematurely on attainment of age of 58 years, the amount of leave encashment for the leave earned was paid. However, consequent upon enhancement of retirement age to 60 years when they were allowed to rejoin and finally retired on attainment of 60 years of age, the leave encashment earned after initial forced retirement was separately paid. They submitted that major portion of the earned leave paid to the petitioners on attaining the age of 58 years was on old scale and only a paltry amount was paid to them after they were allowed to rejoin and retired on attainment of age of 60 years on new scale. They contended that, under the law, encashment of earned leave is admissible on the date of retirement subject to maximum of three hundred days. According to them, it ought to have been calculated on the basis of last pay drawn on the date of retirement and not on the basis of pay drawn on completion of 58 years of age when the petitioners were illegally forced to retire. They further contended that so far as the payment of gratuity is concerned when the petitioners were forced to retire on attainment of age of 58 years the maximum amount of gratuity admissible was rupees three lakh fifty thousand, which was subsequently raised to rupees ten lakh. They contended



that the petitioners were paid a sum of rupees three lakh fifty thousand after they were forced to retire at the age of 58 years, but when they rejoined and retired on a later date on attainment of age of 60 years, admissible gratuity amount was increased to a maximum of rupees ten lakh. Accordingly, they have been paid deficient amount after they retired on attainment of age of 60 years, but substantial amount was deducted from their admissible gratuity in the name that there have been some loss of interest due to early payment of rupees three lakh fifty thousand made to them on attaining the age of 58 years. They contended that such deduction from the amount of gratuity is without any fault on the part of the petitioners and the decision of the respondent authorities in this regard is arbitrary and illegal.

25. Per contra, learned counsel for the Corporation submitted that individual representations of the petitioners of each cases were considered by the authorities of the Corporation carefully and their representations have been rightly rejected. He contended that the order passed by this Court in Yogeshwar Prasad Singh's case (supra) (CWJC No.1324 of 2011) has been fully complied with and there is no occasion for the petitioners to re-agitate the matter. He contended that the amount of leave encashment and gratuity paid to the petitioners after their retirement on attainment of age of 58 years



was never returned to the Corporation when they were allowed to rejoin and, thus, the balance leave encashment amount was paid on new scale and certain deductions were made from the gratuity paid to the beneficiaries second time. He contended that the deductions from the gratuity paid to the beneficiaries were not retained by the Corporation rather they were returned to the L.I.C. which manages gratuity fund to meet the short fall in the fund. He contended that the decision of the Corporation to pay only the balance amount on new scale and deduct the amount of interest from the balance of gratuity is neither illegal nor arbitrary and hence, the writ petitions deserve to be dismissed.

26. In reply, learned counsel for the petitioners submitted that pre-payment of leave encashment and gratuity as claimed by the Corporation was unilateral decision of the Corporation and, hence, the Corporation is not justified in penalizing the petitioners for the fault of their own.

27. Having heard the parties and on going through the materials on record, I am of the considered opinion that so far as payment of earned leave is concerned, the decision of the respondent Corporation to calculate the same on the basis of broken service (two stages), i.e. on retirement at the age of 58 years and the second stage of retirement at the age of 60 years cannot be justified. Encashment of



leave is a benefit granted under the relevant rules to an employee subject to a maximum of 300 days on the date of retirement. There is no concept of two retirement dates of a Government employee in an establishment under the service jurisprudence. The action of the Corporation in denying the payment on new scale, which came into effect when the petitioners attained the actual age of retirement at 60 years on the ground that the payment received by them earlier on attainment of age of 58 years was not returned, is patently illegal. The decision to retire the petitioners at a premature age has been held to be bad by this Court and the decision of this Court has not been interfered with by the Hon'ble Apex Court. Thus, the petitioners have rightly submitted that it was unilateral decision of the Corporation to retire the petitioners on attainment of age of 58 years. There is nothing to suggest that upon re-induction of the petitioners they were ever asked by the Corporation to refund the amount of earned leave paid to them earlier. Hence the action of the respondent Corporation whereby it has deprived the petitioners of their admissible dues of leave encashment amount on the basis of broken service cannot be justified.

28. For the same reason, I am of the considered opinion that the action of the Corporation in holding back certain amount of gratuity from the balance received from the L.I.C. in the name of the



petitioners cannot be justified. It is an admitted position that when the petitioners were initially asked to retire, the maximum ceiling amount of gratuity was rupees three lakh fifty thousand. However, when they actually retired on attainment of age of 60 years ceiling was increased to the extent of rupees ten lakh in The Gratuity Act. Thus, the petitioners became entitled to additional gratuity. It is the case of the petitioners that from the proceeds of gratuity amount balance received from the L.I.C. in the name of the petitioners, the Corporation has held back certain amount on grounds of pre-payment of portion of gratuity, i.e. the amount which was paid to the petitioners on the basis of premature payment of gratuity amount. If the Corporation had taken any erroneous decision to retire them prematurely, the same cannot be a ground to deny the petitioners their rightful claims and put them to financial loss for no fault of their own.

29. In view of the discussions made above, the impugned orders passed by the respondent authorities on the representations of the petitioners whereby the claim of the petitioners for payment of balance leave encashment as per revision in salary in the Corporation on the date of retirement of the petitioners on attainment of age of 60 years and the payment of deducted amount of gratuity payable on the revised scale of pay have been rejected are set aside. I also direct the authorities of the Corporation to calculate encashment of earned leave



of the petitioners on the basis of their actual date of retirement and pay the balance admissible amount to the petitioners. I further direct the respondents to release the amount deducted from the gratuity paid to the petitioners second time, which the Corporation says that it has returned to the L.I.C. to meet the short fall in the fund. The payments as directed above shall be made to the petitioners within a period of three months from the date of receipt/production of a copy of this order.

30. With the aforesaid observations and directions, the writ petitions are disposed of.

31. The parties shall bear their own costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE
Uploading Date	27.5.2017
Transmission Date	

