

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP. 2938/12**

Case of Raghubir Sahu

This matter was finally heard in presence of applicant Raghubir Sahu and Asstt. Commissioner of Commercial Taxes (Hqrs.) Sri Ashok Kumar Jha who appeared on behalf of Principal Secretary, Commercial Taxes Department., on 11.7.2013 and the decision was reserved.

The complaint of the applicant is about two items of retiral benefits viz. gratuity and unutilized leave salary. He has been allowed 90% retiral pension. Full pension has not been sanctioned for the present on account of pendency of vigilance case. It is on that ground that gratuity also has not been sanctioned and paid. As regards unutilized leave salary, the Commercial Taxes Department took a decision to withhold the amount on the premise that he was guilty of embezzlement. From the file it appears that Finance Department had made a specific query on 3.2.2012 as to whether it was a case of embezzlement. After the file came back to the Commercial Taxes Department, the matter was examined at different levels and it took the view that the applicant was party to embezzlement.

The allegation against the applicant is that he had caused disappearance of certain files of the Department. In its order dated 29.5.2013 the Commission observed that:–

“.... this by no stretch of logic can constitute charge of embezzlement. Embezzlement of public money, if any, was a fait accompli and if the applicant indeed helped the persons concerned by causing the disappearance of the relevant files, he can be proceeded against for disappearance of the files and destruction of evidence. On that ground he cannot be held to have embezzled the money himself”.

The Commission sought response of the Commercial Taxes Department. On notice Principal Secretary, Sri N.K. Sinha personally appeared on 7.6.2013 and sought time to ascertain the facts. On

27.6.2013 Sri Sinha again sought adjournment. He stated that he had made reference to concerned departments and if there is nothing against the applicant, the whole exercise including the vigilance case may turn out to be futile and unwarranted. On the next date viz. 11.7.2013 Sri Ashok Kumar Jha Asstt. Commissioner of Commercial Taxes appeared and produced copies of the correspondence between the Commercial Taxes Department and Building Construction Department from which it appears that the desired records are not available in the Building Construction Department. No report has been filed suggesting – even remotely, culpability of the applicant.

The Commission is of the view that the whole exercise to dig into the records was unnecessary. Even if it is assumed that there was embezzlement of public money, it is not the case of the Department that applicant had committed embezzlement or facilitated the same. The allegation against him is that he facilitated in disappearance of certain files. The applicant has squarely denied any role – and there is nothing to prima facie implicate him in the alleged act of disappearance. But even if it is assumed that he did facilitate disappearance of the file, he may be guilty of an offence of causing disappearance/destruction of evidence described in section 201 IPC – if the offence were to be described in the language of the Indian Penal Code. But the act of causing disappearance/destruction of evidence is not the same as the main offence. As stated in the earlier order, embezzlement, if any, was a completed act which took place years ago – a fait accompli, and the applicant cannot be linked with the same simply because he allegedly made the files to disappear.

The upshot of the above discussion is that the applicant cannot be denied gratuity and/or unutilized leave salary on the ground that he was party to embezzlement of money. It is relevant to mention here that neither any disciplinary proceeding nor any proceeding under rule 43(b) of the Bihar Pension Rules was initiated against the applicant while he was in active service or after his retirement, respectively. In the circumstances, the Commission is of the view that the applicant should be paid gratuity and unutilized leave salary.

The Commission would like to clarify in this connection that the complaint of the applicant on first blush would appear to lie in the realm of service matters. However, there can not be two opinions that non-payment or less payment of the retiral dues has a direct bearing on one's livelihood, that is, right to life and therefore involves human right issues. That is how the Commission entertained the complaint.

In fairness to the applicant, it may be mentioned that he produced various judgments of different courts including Supreme Court in support of his claim. It is not necessary to refer to them.

To conclude, the Commission directs Principal Secretary, Commercial Taxes Department to pay outstanding retiral dues of the applicant within period of six week and submit compliance report to this Commission.

Copy of this order may be sent to (i) the applicant, (ii) Principal Secretary, Commercial Taxes Department.

Date: 16.07.2013

Justice S.N. Jha
Chairperson