

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3773 of 2015

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Pratima Kumari, Wife of Sri Sudhir Kant Roy, r/o village/Mohalla-
Maharour, P.S- Rosera, town and district Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar New Secretariate, Patna.
2. The Director (Secondary Education), Bihar Patna.
3. Regional Dy. Director of Education, Darbhanga Division, Darbhanga.
4. The District Education Officer, Samastipur.
5. The District Programme officer (Estt .), Samastipur.
6. The Accountant General, Bihar, Beerchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha, Advocate.

For the Respondent/s : Mr. S.S. Prasad, SC 10

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 23-03-2015 Heard learned counsel for the parties as with regard to
the following prayer made in this writ application:

"1. For a direction on the respondents to pay pension, gratuity and leave encashment amount along with interest @ 9% per annum from due date of payment to actual date of payment."

2. Mr. Kishore Kumar Thakur, learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that the respondents are wholly unjustified in their action in withholding the amount of pension and Gratuity and Leave Encashment keeping in view that the petitioner had already retired on 31.05.2014. He further explains that as a matter of fact the departmental proceeding drawn against the petitioner on 16.06.2014 in terms of Bihar Government Servant (Classification,

Control and Appeal) Rules, 2005, (hereinafter referred to as 'the CCA Rules') after the retirement of the petitioner on 31.05.2014, vide Annexure-1 to the writ application, can also not be a ground for withholding the amount of retirement benefit of the petitioner, specially when such proceedings itself is not maintainable.

3. In this case, a counter affidavit has already been filed by the respondent wherein the Deputy Director (Secondary Education), Patna has taken a plea that the petitioner was facing the charge of serious misconduct as with regard to disobedience of a direction given by the Hon'ble Apex Court. It has also been stated that in the aforementioned misconduct, the petitioner was earlier reminded and when the order of the Apex Court was still not complied by the petitioner, the department has taken a decision to initiate a departmental proceeding. In the counter affidavit, it has also been explained that as per the Government rules and norms, provisional pension and Gratuity @ 90% has already been sanctioned.

4. In reply, Mr. Thakur submits that as a matter of fact continuation of departmental proceeding against the petitioner now would be farce because the petitioner in her written statement of defence to the memo of charge has already been explained that the order of the Apex Court had already been complied by the

petitioner on 08.02.2014 and, therefore, this Court should direct for payment of full retirement benefit to the petitioner.

5. There are two aspects which would attract the attention of this Court on the basis of the submissions of the learned counsel for the parties. Firstly, the issue raised by the petitioner that no departmental proceeding could have been continued against her under the provisions of the CCA Rules because she had already retired from service on 31.05.2014 whereas the memo of charge by way of initiation of a departmental proceeding was issued on 16.06.2014 has no merit because the retirement of the petitioner can not take away the power of the Government in initiating a departmental proceeding.

6. Let it be noted that under proviso to Rule 43 (b) of the Bihar Pension Rules, a departmental proceeding for a misconduct or for a grave misconduct or causing financial loss can be initiated even if it had taken place four years prior to initiation of such proceeding. Admittedly, violation of the direction of the order of the Apex Court is a grave misconduct and, therefore, when such order of the Apex Court was passed on 08.07.2013, non-compliance of the same by the petitioner as alleged in the counter affidavit was definitely within the period of four years.

7. That being so, this Court would not find any error in



continuation of departmental proceeding and the use of the word ' exercise of Power under the CCA Rules will not by itself vitiate the order because it is a settled principles in law that if source of power is well defined and available more use of a wrong provision of law in the order the provision of law will not vitiate the action. In the present case the order has to be read in exercise of power under Rule 43(b) of Bihar Pension Rules.

8. Thus, this Court will have no difficulty in holding that such departmental proceeding initiated against the petitioner has to reach to its logical conclusion. The very fact that the petitioner, as claimed in written statement of defence filed by her that the order of the Apex Court was complied by her on 08.02.2014 even before issuance of memo of charge, may therefore be a circumstance to mitigate the allegation of gross misconduct allegedly committed by her as per the memo of charge but then the competent authority will have to now come to such conclusion on the consideration of materials on record including the defence of the petitioner and that can only be done in a departmental proceeding.

9. In that view of the matter, this Court would direct that the departmental proceeding initiated against the petitioner vide the memo of charge dated 16.06.2014 must be concluded by

passing a final order within a period of six months from the date of receipt of a copy of this order.

10. As the stand has already been taken by the respondent that the amount of provisional pension and provisional gratuity has been sanctioned, this Court would also direct all concerned authorities to ensure that the payment thereof to the petitioner, if not already made by now, must be made within the period of one month from the date of receipt of a copy of this order.

11. It goes without saying that the final decision with regard to payment of entire retirement benefit will be made after the result of the departmental proceeding.

12. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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