

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.883 of 2012

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Sidheshwar Sharma S/O Late Ram Bilash Sharma Retired Sectional Clerk, R.E. Cum Supply Sub-Division, Nawada (Urban), Residing At Mohalla-New Area, Ward No.-6, Nawada, P.O., P.S. & District-Nawada

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Patna through its Secretary
2. The General Manager-Cum-Chief Engineer, Central Bihar Area Electricity Board, Patna
3. The General Manager-Cum-Chief Engineer, Magadh Area Electricity Board, Gaya
4. The Director (Personnel), Magadh Area Electricity Board, Gaya
5. The Superintending Engineer, Electric Supply Circle, Gaya
6. The Executive Engineer, Electric Supply Division, Nawada
7. The Assistant Engineer, Electric Supply Sub-Division, Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mr. Siya Ram Shahi, Adv. Mr. Sunil Kumar Sharma, Adv. Mr. Gopal Bohra, Adv.
For the Electricity Board	:	Mr. Ajay Kumar Gautam, Adv.
For the State of Bihar	:	Mr. Din Bandhu Singh, G.P. 9 Mr. Satyeshwar Prasad, AC to G.P. 9.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-09-2015

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that as of now the petitioner is only aggrieved with the action of the respondents in withholding 10 % of pension and entire gratuity. Learned counsel submits that though the petitioner was granted 90 % provisional pension but entire gratuity was withheld on the ground that he was accused in Vigilance P.S. Case No. 32 of 1991 instituted under Prevention of Corruption Act, the same cannot be made a ground for



such withholding of either the remaining 10 % pension or the entire gratuity as has been held by the Hon'ble Supreme Court in a catena of decisions including the latest one being **State of Jharkhand v. Jitendra Kumar Srivastava** reported in **2013 (12) SCC 210** where it has been held that administrative instruction cannot substitute the law/rules. It is submitted that the very Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') under which the authorities have withheld 10 % pension and entire gratuity, was the subject matter before the Hon'ble Supreme Court. In the aforesaid case it has also been held that administrative instructions cannot override statutory provisions. It is submitted that the Hon'ble Supreme Court has discussed the stand of the State that there were administrative instructions permitting withholding of part of pension and gratuity. Learned counsel submits that the petitioner has been subjected to arbitrary action of the respondents for which interest may also be awarded.

Learned counsel for the respondents submits that they have adopted the Rules and as per Rule 43 (b) read with the clarificatory circular of the government that when there is departmental or criminal case pending, part of pension and entire gratuity can be withheld, taking recourse to the same, the petitioner has been denied 10 % and entire gratuity as the criminal case is still pending. He submits that the same is permissible. For such

proposition he has relied upon the decision of Hon'ble the Supreme Court in the case of **Jarnail Singh v. Secretary, Ministry of Home Affairs** reported in **1994 S.C. 1484** and on a decision of a Bench of this Hon'ble Court in the case of **Nagendra Pathak vs. State of Bihar** reported in **2012 (4) PLJR 725**.

Upon considering the facts and circumstances of the case and submissions of the parties, this Court finds force in the submissions of the learned counsel for the petitioner.

In view of law laid down by Hon'ble the Supreme Court in the case of **State of Jharkhand v. Jitendra Kumar Srivastava** (supra) as the issue involved was consideration of Rule 43(b) of the Rules and power to withhold part of pension and gratuity as per administrative instruction was under consideration and the Hon'ble Supreme Court had held that there being no provision in the Rules for such action, the administrative instructions in this regard, contrary to the provisions of the Rules, cannot prevail. The Hon'ble Supreme Court has further held that the right to receive pension has been recognized as a right in "property" and thus protected under Article 300-A of the Constitution of India. The Court held that executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A and on the basis of such circular, which is not having force of law, even part of pension or gratuity, cannot be withheld as in the statutory

Rules there is no such provision.

This Court following the law laid down by Hon'ble the Supreme Court in the case of **State of Jharkhand v. Jitendra Kumar Srivastava** (supra), holds that the petitioner shall be entitled to the payment of full pension and gratuity. The petitioner is further held entitled for statutory interest on gratuity. Let payment be made to the petitioner in the aforementioned terms within six weeks from the date of production of a copy of this order before the respondent no. 2.

This Court is not passing any order with regard to the petitioner being paid the benefit of 5th and 6th pay revision in view of learned counsel for the respondents submitting that the same has already been granted to the petitioner. If the petitioner finds that the same has not yet been given, he shall file a representation before the respondent no. 2 within four weeks from today along with a copy of this order which shall be looked into and disposed off ensuring that such benefit, if applicable, is paid to the petitioner within three weeks thereafter.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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