

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.675 of 2014

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Md. Idrish S/O Late Abdul Karim R/O Vill. + Post - Gaiyari Police Station
- Araria, District - Araria (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Secretary Home (Police) Department, Government Of Bihar, Old Secretariate, Patna
3. The Commandant General, Bihar Home Guards, Home Guards Headquater, Chajubagh, Patna
4. Commandant Bihar Home Guard Headquarter, Chhajubagh, Patna
5. District Commandant, Bihar Home Guards, Madhepura, District - Madhepura
6. District Commandant, Bihar Home Guards, Purnea, District - Purnea
7. The Accountant General, Bihr, Beerchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hare Ram Sah, Adv
For the State : Mr. Nivedita Nirvikar GA-10 with Mr. Anil Kumar Singh AC to GA-10
For the A.G. : Mr. Binod Kumar Labh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

7 17-03-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ
application reads as follows:-

“That this is an application for issuance of writ in the nature of mandamus or directions commanding respondents; the petitioner has retired from service from the post of company commander, Bihar Home Guards from the of District Commandant, Bihar Home Guards, Purnea on dated 30/06/2000 and has filed this present writ application for following reliefs:-

(i) For commanding District Commandant, Bihar Home Guard, Madhepura to immediate grant no dues certificate to the petitioner.

(ii) For commanding respondents to immediate accept all voucher, proof of expenditure & cutting of cheques which is already available with petitioner & issue the proper

receiving/acknowledgement of the same.

(iii) For commanding the respondents to immediately fix and make payment of the arrears of pension & current pension to the petitioner.

(iv) For Commanding respondents to start muchless immediately provisional pension which is stop since April, 2007.

(v) For any other appropriate relief or reliefs for which the petitioner is found entitled in the facts & circumstances of the present case.”.

Learned counsel for the petitioner submits that the petitioner has been suffering from paralysis and therefore, stoppage of payment of even provisional pension from April-2007 on the ground of more pendency of a criminal case involving the allegation of embezzlement of Government fund by the petitioner will not be justified because on the one hand petitioner's entire retirement benefit has been withheld and on the other hand even provisional pension is not being paid.

This Court has, accordingly, perused the counter affidavit filed on behalf of respondent no. 4, wherein, it has been stated as follows:-

“That it is humbly stated and submitted that the petitioner is not entitled for the reliefs sought by him, since the criminal case for defalcation of Govt. money is pending against him bearing Madhepura P.S. Case No. 244/05 under Sections 409, 34 of the I.P.C due to pendency of PRAMANAKS against him. The defalcation against him involves nearly Rs. 17 laksh and charge sheet bearing

numbered as 248/08 dated 30.06.2008 has already been submitted against him declaring him absconder and the case is pending in the trial Court at Madhepura.

That the admissible dues have already been paid. However, the petitioner has not yet submitted the duly filled G.P.F form and the pension could not be fixed due to non issuance of the no objection certificate as financial irregularities have been committed by him regarding which he is also facing criminal trial.

That prior to stopping of provisional pension the petitioner was given show cause vide Memo No. 230 date 15.03.2007, Memo No. 338 dated 7.04.2007 and Memo No. 814 dated 09.06.2007 all Memos were issued under the signature of District Commandant, Purnia.”

As would be apparent from the aforesaid stand of the Respondents, the petitioner's retirement benefit has been withheld on account of pendency of a criminal case involving serious allegation of misappropriation/defalcation of sum of Rs. 17 lacs and therefore in the considered opinion of this court, the petitioner will not be entitled for payment of full retirement benefit till disposal of the criminal case.

Nonetheless, this Court cannot appreciate as to how the provisional pension of the petitioner can be withheld during the pendency of the criminal case. Bihar Pension Rules and the Government instruction issued thereunder has made it clear that during the pendency of

the departmental proceeding and/or criminal trial the delinquent/accused will be entitled for payment of 90 per cent of the provisional pension.

In that view of the matter, this Court would direct the competent authority to pay the balance of provisional pension to the petitioner from the month of April-2007 onwards keeping in view the present physical condition of the petitioner.

At the same time, this Court keeping in view that the criminal trial against the petitioner arising out of Madhepura P.S. Case No. 244 of 2005 in which chargesheet no. 248 of 2008, has already been submitted on 30.06.2008, would direct the trial Court to ensure that the trial against the petitioner is expedited and concluded preferably within a period of 9 months from the date of receipt of this order. If the petitioner does not co-operate in the trial, the trial Court will be at liberty to proceed against him in accordance with law and the trial however must come to an end as early as possible within

the aforementioned period of nine months.

Final decision as with regard to the retirement benefit as claimed in this writ application would abide by the result of the criminal case but till the criminal case is disposed of the petitioner must be kept on paid 90 per cent of the provisional pension on the basis of last salary drawn by the petitioner.

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

Let a copy of this order be sent to both the District and Sessions Judge, Madhepura as well as the trial court for its compliance in letter and spirit.

(Mihir Kumar Jha, J)

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