

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19415 of 2014

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1. The State of Bihar , through the Principal Secretary, Department of Environment AND Forest, Sichai Bhawan, Patna.
 2. The Principal Chief Conservator of Forest, State of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.

.... Petitioner/s

Versus

1. Ashok Prasad Son of Late Jagdish Prasad resident of Flat No. 107, Sanyam Pratik Apartment, Maurya Path, Khajpura, Patna - Ex-retired, I.F.S. Patna.
2. The Union of India through the Secretary, Ministry of Forest AND Environment, Government of India.
3. The Senior Accounts Officer, Office of Accountant General (A AND E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	M/S. Gautam Bose, Sr. Adv., AAG-8
	:	With
	:	Ajay Kumar, AC to AAG-8 & Vikash Jha
For the Union of India	:	Mr. Satyavrat Verma, CGC
For the private respondent	:	Mr. Raj Kishore Prasad

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

2 13-08-2015 Heard learned counsel for the State, Union of India and the sole contesting respondent.

2. The State is aggrieved by the order of the Central Administrative Tribunal dated 6th December, 2013, by which notwithstanding Rule 6(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as "Rules"), it has ordered that notwithstanding a criminal

proceeding against the sole contesting respondent, he would be entitled to be paid gratuity.

3. Rule 6(2) of the said Rules postulates as follows:

“(2) where any departmental or judicial proceeding is instituted under Sub-rule(1) or.....provisional pension.....would have been admitted on the basis of his qualifying service up to the date of retirement.....but **no gratuity** or death-cum-retirement gratuity **shall be paid to him until the conclusion of such proceedings** and the issue of final orders thereto.”

4. It is not in issue that the contesting respondent has not been paid all other pensionary dues, though he disputes correctness of the rate or the scale. Gratuity is being withheld in view of the aforesaid Rule. We may note that the contesting respondent can do little, but so long the Rule remains the way it is, gratuity cannot be paid. The Tribunal was not correct in finding a way out on misplaced sympathy. We, thus, are clear that the Tribunal was in error in so holding.

5. This writ petition is allowed and the order of the Tribunal is set aside.

(Navaniti Prasad Singh, J)

BK.Roy/-

(Nilu Agrawal, J)

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