

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12638 of 2011

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Hans Nath Tiwari, S/o Late Jagdeo Tiwari, resident of Village- Mamorkha,
P.S. Malahi, District- East Champaran (Motihari).

.... Petitioner

Versus

1. The State of Bihar through its Secretary Public Health and Engineering Department Government of Bihar Patna.
2. The Commissioner Public Health and Engineering Department, Bihar Patna.
3. The Joint Secretary, Public Health Engineering Department Government of Bihar Patna.
4. The Principal Secretary Public Health Engineering Department, Government of Bihar Patna.
5. The Superintending Engineer, Public Health Engineering Department Circle Motihari.
6. The Executive Engineer, Public Health Engineering Department Divisional Office, Dhaka, Motihari.
7. The Sub Divisional Officer, Public Health Engineering Department Chakia, Motihari.
8. The Accountant General, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

4. 15.01.2015

Heard learned counsel for the parties.

Learned counsel for the petitioner is permitted to implead the Accountant, General Bihar as respondent no. 8. Let necessary correction be made during the course of the day.

It appears that only 90% pension and leave encashment has been granted to the petitioner whereas 10% pension and entire gratuity has been withheld on account of criminal case instituted after the petitioner superannuated.

From the materials on record in the



supplementary counter affidavit filed on behalf of respondents no. 1 to 4 the Government order contained in Finance Department Resolution No. 3014 dated 31.07.1980, Clause 7 (Kha) makes it amply clear that pension cannot be withheld if till the date of superannuation there was no departmental proceeding or criminal proceeding pending. In the present case, the admitted position being that the criminal case was instituted after the petitioner has superannuated, learned counsel for the State is not in a position to defend the act of the respondents in withholding payment of full pension and gratuity to the petitioner.

In view of the aforesaid, the application stands disposed off with a direction to the respondents to pay the full and final pension to the petitioner along with gratuity. Sanction letter to this effect shall be issued within three weeks from the date of production/receipt of a copy of this order before the respondent no. 3. and the same shall be sent to the newly added respondent no. 8 along with a copy of this order. Respondent no. 8 shall ensure that payment order in favour of the petitioner is issued within two weeks thereafter. The respondents shall ensure payment to the petitioner within six weeks of the issuance of payment order by respondent no. 8.

In view of the decision of the Hon'ble Supreme Court in the case of **D. D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd.** reported in **(2014) 8 SCC 894**, the amount

payable to the petitioner shall carry interest at the rate of 9% on delayed payment which shall also be paid within the said period of six weeks, failing which interest at the rate of 18% per annum would be payable.

(Ahsanuddin Amanullah, J.)

Anand Kr.

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