

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.136 of 2014

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Akhileshwar Prasad Mishra Son Of Late Hardatt Mishra Resident Of Village-
Orro, P.S.- Hasua, District- Nawada

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department,
Govt. Of Bihar
2. The Director, Administration-Cum-Additional Secretary, Human Resources
Development Department, Bihar, Patna
3. The Accountant General, Birchand Patel Marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.
For the State : Mr. Narendra Kumar Singh, AC to GP-2
For the AG : Mr. Uday Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 19-02-2015

Heard learned counsel for the parties as with regard to the
following relief prayed in this writ application:-

- "1. ----- directing the respondent to grant full pension
and gratuity against which only provisional pension
of 90% has been paid and no gratuity has been paid
on pretext of pendency of departmental proceeding
initiated against the petitioner vide letter No. 787
dated 29.08.2008 containing charge leveled by the
District Magistrate, Aurangabad vide his letter No.
119 dated 12.03.2008 and letter No. 322 dated
04.02.2008 of Sub-divisional Officer, Aurangabad
under Rule-17 of C.C.C. Rules, 2005 in which
Enquiry Officer exonerated the Petitioner except
partially proved with respect to Charge No.3 for not
using respectable language against the Sub-
divisional Officer, Aurangabad, which is wholly
unsustainable on fact and in law as not utterable
language was used by the petitioner against the Sub-



divisional language was used by the petitioner against the Sub-divisional Officer, Aurangabad. However, the departmental proceeding without conversion of Rule-43(b) of Bihar Pension Rule after retirement was wholly illegal, it is well settled principle laid down by the Hon'ble Supreme Court in the case of State of Jharkhand Vs. Jitendra Kumar Srivastava and another reported in 2013, Vol 3, PLJR, Page-458 that the pension, gratuity and other retrial benefit cannot be withheld on the ground of pendency of departmental proceeding."

Learned counsel for the petitioner very fairly submits that in view of the order passed on 6.9.2014 as contained in Annexure-D, it would now appear that the petitioner has been inflicted with a punishment of stoppage of 5% of pension. According to him, this order in continuation to the earlier order sanctioning 90% of provisional pension and 90% of provisional gratuity will entitle him for payment of certain more amount of retirement benefit but that also has not been paid. He has further submitted that the petitioner having been now apprised of order of punishment dated 6.9.2014 actually has been handicapped because the consequential order/notification of such punishment has not been served on the petitioner as yet.

Learned counsel for the respondent on the other hand has submitted that whatever relief was sought in this writ application has already been given to the petitioner inasmuch as the petitioner had challenged the very continuation of the departmental proceeding or withholding of the pension and gratuity. He has further submitted that

as per the order of punishment passed on 6.9.2014, the petitioner will become entitled to get only 95% of the pension because 5% of pension has been withheld. He has also submitted that the order has already been passed authorizing the petitioner to get 95% of pension and 100% of gratuity.

Learned counsel for the petitioner in reply has submitted that while it is true that the petitioner has been authorized to get pension 95% of pension and 100% gratuity but its payment beyond 90% on both the heads has not been made as yet.

In that view of the matter, this Court would direct the respondents Director, Administration-cum- Secretary to the Education Department to ensure payment of admitted amount of pension and gratuity within a period of three months from the date of receipt of this order as also make an order of punishment available to the petitioner as contemplated in the communication contained in memo no. 3340 dated 6.9.2014 so that the petitioner may be able to move appropriate authority/court against the order withholding 5% of his pension.

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

(Mihir Kumar Jha, J)

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