

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.24678 of 2013**

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1. Rajnanadan Prasad S/O Late Gaddi Prasad Resident Of Village- Naugarh,  
Police Station- Hilsa In The District Of Nalanda.

.... .... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Education, Government Of Bihar, Patna.
2. The Principal Secretary, Department Of Education, Government Of Bihar, Patna.
3. The Director, Secondary Education, Government Of Bihar, Patna.
4. The District Magistrate, Jehanabad.
5. The Regional Deputy Director, Education, Magadh Division, Gaya
6. The District Education Officer, Jehanabad.
7. The Treasury Officer, Jehanabad.
8. The In- Charge Headmaster, L.A.S. High School, Pali Bazar Under Kako Block In The District Of Jehanabad
9. The Accountant General, Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr. Nivedita Nirvikar

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL ORDER**

4 07-05-2015

Heard learned counsel for the petitioner.

Earlier vide order dated 14.10.2014 hearing was concluded and order had been kept reserved but since the correct picture is not clear as to whether the payments have been made to

the petitioner or not, the matter has been placed for orders today.

Learned counsel for the petitioner submits that petitioner has received the retiral dues but the amount of Rs. 40,000/- has been illegally withheld by the respondents only because the first information report had been instituted against some unknown persons bearing Pali P.S. Case No. 47 of 2011 dated 17.08.2011, i.e. after the date of his retirement.

Learned counsel for the petitioner also clarifies that in the said case, he is not named as accused but only on the basis of subsequent suspicion, charge sheet has been submitted against him in connection with the said case.

Having perused the counter affidavit, it appears that only on the basis of suspicion; the petitioner's name was included subsequently, in connection with the said case. Counter affidavit also states that because of the said implication of the petitioner in connection with Pali P.S. Case No. 47 of 2011 dated 17.08.2011 regarding theft of computers of school, during which period the petitioner was functioning as in-charge Head Master, a sum of Rs. 40,000/- has been withheld.

However, as per the counter affidavit it does not appear that the respondents have initiated any Departmental Proceeding under the relevant Pension Rules. Yet the aforementioned amount

has been withheld. Such a contention raised by the respondents cannot be accepted, as is clear from a perusal of Rule 43 (b) of Bihar Pension Rules. The said principles has been clearly enunciated in a recent judgment of the Apex Court in the case of *State of Jharkhand Versus Jitendra Kumar Srivastave reported in 2013 (3) PLJR, 458*. The Apex Court while dealing with the question, had occasion to deal with various provisions of the Bihar Pension Rules, particularly Rule 43 (b) of the said rules in paragraph Nos. 9, 10 and 11, which is quoted here in below :-

“9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under -:

**43(b)** The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty to grave misconduct; or to have caused pecuniary loss to Government

misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.”

From the reading of the aforesaid Rule 43(b), following position emerges:-

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

**10.** There is also a Proviso to Rule 43 (b), which provides that :-

**“(A).** Such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment.

i. Shall not be instituted save with the

sanction of the State Government.

ii. Shall be in respect of an event which took place not more than four years before the institution of such proceedings.

iii. Shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

**(B)** Judicial proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment shall have been instated in accordance with sub clause (ii) of clause (a), and

**(C)** The Bihar Public Service Commission, shall be consulted before final orders are passed.

It is apparent that the proviso speaks about the institution of proceedings. For initiating proceedings, Rule 43 (b) puts some conditions, i.e. Departmental proceeding as indicated in Rule 43 (b), if not instituted while the Government Servant was on duty, then it shall not be instituted except :-

(a) with the sanction of the Government,

(b) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.

(c) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made

Thus, in so far as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

**11.** Reading of Rule 43 (b) makes it abundantly clear that even after the conclusion of the departmental enquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending”.

It is thus, clear that any order withholding the pension on account of pendency of any judicial proceeding without there being any finding of guilt, has not been permitted by the said rules and cannot be sustained in the eyes of law.

In the event of such facts and circumstances, it is made clear that the respondent shall release the aforesaid amount in favour of the petitioner. It is also directed that in view of the fact that the pension and other retiral dues have also been paid

belatedly to the petitioner, the respondents shall calculate the interest permissible to Senior Citizens from the date of accrual of the said amount till the date of actual payment, which has been paid only in October, 2014. The aforesaid amount shall be paid to the petitioner within a period of three months from the date of receipt/production of certified copy of the present order.

With the aforesaid observations and directions, this writ application stands disposed of.

**(Anjana Mishra, J)**

Jagdish/-

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