IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13952 of 2016

==

Sri Bhagwan Rai, aged about 62 years, Son of Late Ram Naresh Ray, resident of Village- Misrichak (Narayanpur), Police Station- Bihta, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Agriculture Department, Bihar, Patna.
3. The Under Secretary, Agriculture Department, Bihar, Patna.
4. The Accountant General, Bihar, Patna.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar. Advocate
For the A.G./State	:	Mr. Dr. Anand Kumar, Advocate Mr. Intekhab Hassan, A.C, to A.A.G. 13

==

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-09-2016

Heard learned counsel for the parties.

The petitioner seeks a direction for release of his 100% pension, gratuity as well as unutilized earned leave.

Learned counsel for the petitioner submits that though he was arrested by the Vigilance, being caught getting illegal gratification, on 21.08.2014 and thereafter superannuated on 30.09.2014, but in terms of the provisions of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') he is entitled to 90% pension. He further submits that since pension includes gratuity, an amount of not less than 90% gratuity is also required to be paid. He submits that leave encashment cannot be withheld as there is no provision for withholding such payment.

Learned counsel for the State submits that as per the Rules, there being an amendment brought about by the notification dated 31st July, 1980, only provisional pension is payable. He further submits that by amendment Rule 43(c) has been added in the Rules which also stipulate that the provisional pension shall not be less than 90%.

Having considered the rival contentions, the Court finds that in view of the admitted position that there being a substantive vigilance case pending against the petitioner, he may not be entitled to full pension or gratuity. The newly added Rule 43(c) reads as under:

> "43.(c)- Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).
>
> This will come into force with immediate effect."

The amendment brought in the Rules by the notification of the State Government dated 31st July, 1980 and Clause 7(c) of the same provides that in case where the final disposal of departmental or judicial proceeding initiated during the service period of any government servant is not possible till the date of his/her retirement, then action to sanction provisional pension be initiated. It is further stipulated that in the cases of this category, the amount of provisional pension, as per rule, shall be less than the maximum amount of pension admissible but it shall not be less than 90% in any circumstance. The said Rule is quoted hereinbelow:

> "7 **(c)** Where the final disposal of departmental or judicial proceeding initiated during the service period of any government servant is not possible till the date of his/her retirement, then action to sanction provisional pension under provisions of Circular No. 9144/f, dated 22-8-1974 and 11260F, dated 31-10-1974 of the Finance Department be initiated so that that the government servant going to retire may not face any difficulty. Provisions contained in Clause 8(c) below shall not apply in matters of this category. In the cases of this category, the amount of provisional pension, as per rule, shall be less than the maximum amount of pension admissible but it shall not be less than 90 per cent in any circumstance."

Keeping the above in mind, there is no dichotomy with the amended Rule 7(c) and 43(c) of the Rules both of which talk that the minimum amount of pension admissible shall not be 100%. In the present case, the petitioner is admittedly getting 90% provisional pension. As far as gratuity is concerned, Rule 43(c) is silent on the aspect and shall be covered by the other provision for the reason that the amended 7(c) clearly stipulates that in terms of the Circular No. 9144/f dated 22.08.1974 and 11260F, dated 31.10.1974, only provisional pension is to be paid which shall not be 90% and the said circular of the State Government further stipulates that such person shall be paid only provisional pension but not gratuity or death-cum-retirement benefit. The said view has also been taken by a Division bench of this Court in the case of **Vijay Kumar Mishra vs. The State of Bihar & Ors.** in **L.P.A. No. 145 of 2014** decided on 30.06.2016.

For the reasons aforesaid, the relief sought by the petitioner for grant of full pension and gratuity cannot be acceded to. Accordingly, the writ petition stands disposed off with a direction to the respondents to pay leave encashment as per the entitlement of the petitioner, in accordance with law, within four weeks from the date of production of a copy of this order before the respondent no. 2.

It goes without saying that the payment of final pension and gratuity shall be in terms of the decision taken by the Department in the proceeding initiated against the petitioner in view of there being a vigilance case registered against him, both prior to the date of retirement.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	N/A