IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1049 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 10957 of 2011
Along with
Interlocutory Application No.4337 of 2015

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Dharm Nath Singh, son of Late Sheo Lakhan Singh, resident of Village and P.O.-Shobha Chapra, P.S.-Bairia, District-Balia (U.P.), at present resident of Mohalla-Ram Lila Mathiyan, Daroga Rai Chowk, P.O.-Chapra, P.S. Bhagwan Bazar, District-Saran, retired Assistant Civil Court, Madhepura.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar, through Secretary, Law Department, Government of Bihar, Patna.
2. The District and Sessions Judge, Madhepura. At, P.O. and P.S.-Madhepura, District-Madhepura.
3. The Registrar, Civil Court, Madhepura.At, P.O. and P.S.-Madhepura, District-Madhepura.

.... Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund, Advocate
Mr. Anirudh Pandey, Advocate
Mr. Purnendu Keshav, Advocate

For the Respondent/s : Mr. Sunil Kumar, A.C. to G.A.-12

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 21-09-2016

Re.: Interlocutory Application No.4337 of 2015

The application is for condonation of delay of 149 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters

Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1049 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13^{th} of October, 2014 whereby, the prayer for release of retiral benefits, particularly gratuity, was dismissed.

2. The appellant stands convicted for the offence under Section 302 of the Indian Penal Code, though his appeal is pending before the Hon'ble Allahabad High Court. The appellant has been paid provisional pension to the extent of 90% of the pension payable and also the amount of leave encashment. The grievance of the appellant is that gratuity is also liable to be released provisionally in view of Rule 43(b) of the Bihar Pension Rules.

3. Rule 43(b) of the Rules has been examined by Division Bench of this Court in Letters Patent Appeal No.145 of 2014 (Vijay Kumar Mishra *Versus* The State of Bihar & Ors.) decided on 30^{th} of June, 2016 wherein, it has been held that the State Government is competent to withhold the amount of gratuity. The relevant extract reads as under:

> "A perusal of the Notification dated 31^{st} July, 1980 shows that it is not a circular or executive instruction which is contrary Rule 43(b) of the Bihar Pension Rules. Such notification in fact substitutes

> the Bihar Pension Rules, Treasury Code, Service Code and other instructions issued from time to time. Therefore, it is not an executive instruction but the substantive rules which permit withholding of gratuity and other benefits, if there are departmental or judicial proceedings pending against an officer even after his retirement. Still further, the attention of the Supreme Court was not drawn to Rule 27 of the Bihar Pension Rules. As per Rule 27, pension includes gratuity. Therefore, when Rule 43(b) talks about right to withheld pension, it will include the right to withhold gratuity as well. Therefore, even in terms of Rule 43(b), the pension which includes gratuity could be withheld but the issue stands clarified when amending notification was published."

4. In view of the aforesaid judgment, the amount of gratuity can be withheld in exercise of power conferred under Rule 43(b) of the Rules as judicial proceedings are pending before the High Court of Allahabad.

5. In view thereof, we do not find any error in the order passed by the learned Single Bench in the present intra court appeal. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
Uploading Date	27.09.2016
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