

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10508 of 2015

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Tribhuvan Ray aged about 62 years son of Sri Ram Din Ray resident of Mohalla-
Ashokpuri Colony, Khajpura, Police Station- Sahstri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Transport, Government of Bihar, Patna.
2. The Secretary, Transport Department Govt. of Bihar, Bailey Road, Patna.
3. The State Transport Commissioner, Government of Bihar, Patna.
4. The Additional Secretary, Transport Department, Government of Bihar, Patna.
5. The Under Secretary Transport Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.

For the Respondent/s : Mr. Raju Giri, G.P-30

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-08-2016

Heard Mr. Ojha, learned counsel for the petitioner and the
learned counsel for the State-respondents.

Learned counsel for the petitioner has confined his relief
in the present application for direction to the respondents for payment
of the amount of gratuity and leave encashment. It has been submitted
by learned counsel for the petitioner after making reference to the
counter affidavit filed on behalf of the respondents that though by
order dated 02.11.2015 (Annexure-A) the respondents have passed the
order permitting the payment of 90% provisional pension but no order
has been passed with regard to the payment of amount of gratuity and



leave encashment. Relying upon the decision of the Apex Court in the case of **State of Jharkhand Vs. Jitendra Kumar Srivastava, (2013) 12 SCC 210**, learned counsel for the petitioner has further submitted that the respondents have wrongly withheld the payment of gratuity and leave encashment relying upon the circular dated 22.08.1974 and 06.07.1993 as apparent from the statement made in paragraph-6 and 7 of the supplementary counter affidavit on behalf of the respondents. Learned counsel has further referred the Bench decision of this Court as contained in Annexure-R/1 and a decision by the learned single judge as contained in Annexure-R/2 wherein the identical issue came for consideration and it was held that the circular or instruction cannot prevail over the statutory rule and the claim of payment of pension gratuity etc. was allowed. It has thus been submitted that the petitioner is entitled to the payment of full amount of gratuity and leave encashment.

Learned counsel for the State-respondents after referring to the decisions of this Court as contained in Annexure-R/1 and Annexure-R/2 of the rejoinder to the supplementary counter affidavit has fairly submitted in view of the law laid down by this Court that the petitioner is entitled to the payment amount of gratuity and leave encashment.

After considering the submissions and the materials on

record, it is evident that the respondents have not passed any order with regard to the entitlement of the petitioner for the amount of gratuity and leave encashment. Inasmuch as the order dated 02.11.2015 (Annexure-A to the counter affidavit) has been confined to allowing 90% provisional pension to the petitioner. The submission on behalf of the petitioner has substance that in absence of any order with regard to the entitlement of the petitioner for the amount of gratuity and leave encashment, the refusal of the same cannot be supplemented by the statement made in the counter affidavit justifying the non-payment of the amount as claimed.

In this view of the matter, this application is disposed of with direction to the respondents to pass order with regard to the claim of amount of gratuity and leave encashment as made by the petitioner in view of the decisions of this court as contained in Annexure-R/1 and R/2 to the rejoinder filed by the petitioner to the supplementary counter affidavit. The respondents are enjoined to take the decision in accordance with law within a period of four weeks from the date of receipt/production of this order.

(V. Nath, J)

Devendra/-

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