IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5146 of 2012

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Prabhawati Kumari, Wife of Shri Suresh Kumar Chaudhary, resident of Village - R.K. Bhatacharya Road, Post Office - G.P.O., Police Station - Gandhi Maidan, District - Patna 800001.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. The Director Administration-Cum-Additional Secretary, Education Department, Government of Bihar, New Secretariat at Patna.
3. The Secretary, Education Department, Government of Bihar, New Secretariat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Adv.
		Mr. Rakesh Ranjan, Adv.
For the State	:	Mr. Shiv Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 10-08-2016

The petitioner retired after attaining the age of superannuation from the post of Joint Director, Mass Communication, Government of Bihar, Patna.

2. This application has been filed, under Article

226 of the Constitution of India, aggrieved by a communication, dated 15.02.2012, issued by the Director (Administration)-Cum-Additional Commissioner, Education Department, Government of Bihar, Patna, addressed to the Accountant General, Bihar, Patna, whereby, on the ground of pendency of disciplinary proceeding against the petitioner, only 90% of Pension and 90% of Gratuity has been sanctioned in her favour and rest 10% has been decided to be withheld.

3. This is not in dispute that till date no final decision has been taken on the said departmental proceeding initiated against the petitioner.

4. For the purpose of adjudication of the present matter, it would be apt to refer briefly to certain facts.

5. On the charge of certain misconduct committed by the petitioner, during the period 07.01.1997 to 09.12.1999, in relation to appointment of Assistant Teachers, a departmental proceeding was initiated against her. The charge framed against the petitioner was not found to be proved in the departmental enquiry, conducted by the Departmental Enquiry Commissioner, General Administration Department, Government of Bihar, Patna. However, in the opinion of the disciplinary authority, the enquiry report, holding the charge not to have been proved, was not found

to be acceptable. After submission of report of the Enquiry Officer, it was decided to impose upon the petitioner, major punishment of reversion to interior post. The petitioner, thereafter, preferred a departmental appeal. The said departmental appeal came to be allowed by an order, dated 17.05.2011, passed by the Director (Administration)-Cum-Additional Secretary, Education Department, Government of Bihar, Patna. The said order, dated 17.05.2011, has been brought on record by way of Annexure-1 to this writ application.

6. It appears from the said order, dated 17.05.2011, that disagreeing with the report of the Enquiry Officer, the disciplinary authority had imposed upon the petitioner a major punishment of reversion in rank. The appellate authority concluded that before recording disagreement with the report of the Enquiry Officer, the disciplinary authority did not record his notes of disagreement and give the petitioner due opportunity to meet such notes of disagreement. Accordingly, the appellate authority, holding the order of punishment to have been passed in breach of principles of natural justice, set the same aside with an observation that petitioner should be given an opportunity to deal with and reply to the notes of disagreement of the disciplinary authority with the findings

recorded by the enquiry officer.

7. The petitioner superannuated on 31.12.2011 and retired from government service with effect from that very date.

8. A counter affidavit has been filed on behalf of respondent Nos. 1 to 3, bringing on record a notification, dated 10.04.2012, to the effect that the disciplinary proceeding, which was initiated against the petitioner, stood converted under Rule 43 (b) of the Bihar Pension Rules. Further, a communication, dated 16.04.2012, has been brought on record, made by the Director (Administration)-Cum-Additional Secretary, Education Department, Government of Bihar, Patna, addressed to the petitioner, referring to previous communications, dated 30.05.2011 and 21.07.2011, whereby she was asked to submit her reply to the show cause.

9. This is not in dispute that till date no decision has been taken in the departmental enquiry nor there is any finding against the petitioner of misconduct, said to have been committed by her.

10. Learned counsel, appearing on behalf of the respondents-State of Bihar, submits that the concerned file relating to proceeding against the petitioner, under Rule 43 (b) of the Bihar Pension Rules, is traceless.

11. Learned counsel, appearing on behalf of the petitioner, has submitted that since the petitioner has so far not been held guilty of any misconduct in any departmental or judicial proceeding, no part of her pensionary benefits could be reduced, invoking the provisions of the Bihar Pension Rules. He has placed reliance on a Supreme Court decision, in case of ***State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr.***, reported in ***(2013) 12 SCC 210***, to buttress his submission.

12. Learned counsel, appearing on behalf of the petitioner, appears to be right in his submission. It is evident from the pleadings and other materials available on the record that till date there is no finding of petitioner's guilt in any departmental enquiry. The departmental enquiry is still inconclusive. In such circumstances, there cannot be any valid justification for withholding the pensionary benefits, which the petitioner is entitled to.

13. As has been noted above, the petitioner has received 90% of Gratuity and is getting 90% of Pension.

14. In view of the facts and circumstances, as discussed above, I direct the respondents-State of Bihar, particularly respondent No. 2, the Director (Administration)-Cum-Additional Secretary, Education Department, Government of Bihar, Patna, to necessary sanction order for

payment of remaining 10% of Pension and Gratuity to the petitioner within a period of three weeks from the date of receipt/production of a copy of this judgment. The Accountant General, Bihar, Patna, will be required to expedite the matter, accordingly, by issuing necessary authority slip in accordance with law.

15. This application is, accordingly, allowed in terms of directions and observations as above.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.8.2016
Transmission Date	N/A