IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6074 of 2014

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Dr. Surendra Kumar Singh, Son of late Raghubansh Kumar Singh, Resident of Village Dakhin Ekowna, Police Station Udwant Nagar, District Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Animal Husbandry Department, Government of Bihar, Patna
3. The Director, Animal Husbandry, Bihar, Patna
4. The Regional Director, Central Range, Animal Husbandry, Patna
5. The Deputy Secretary, Animal Husbandry Department, Government of Bihar, Patna
6. District Provident Fund Officer, Patna
7. The Accountant General (A & E), Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Advocate.

For the Respondent/s : Mr. Nikesh Kumar, A.C. to S.C. 2

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 17-09-2016

Heard learned counsel for the parties.

2. The petitioner attained the age of superannuation on 31st of July, 2008 and is facing trial before the Special Judge, C.B.I. at Ranchi under various provisions of the Indian Penal Code as well as Prevention of Corruption Act.

3. The petitioner admits that he has been paid 90 per cent of provisional pension but other dues such as General Provident Fund, Leave Encashment, Gratuity have not been paid to him. Reliance is placed upon Supreme Court judgment reported as State of Jharkhand Vs. Jitendra Kumar Srivastava, (2013) 12 SCC 210 to contend that such dues cannot be withheld.

4. The aforesaid judgment has been examined by a Division Bench of this Court in L.P.A. No. 145 of 2014 (Vijay Kumar Mishra Vs. The State of Bihar & Ors.), wherein the Bihar Pension Rules, as amended on 31st of July, 1980, has been considered. The Court held as under:-

> "A perusal of the Notification dated 31st 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 withhold 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."

5. In view of the Division Bench judgment, the petitioner is not entitled to release of gratuity. However, there is no provision which has been brought to the notice that benefits such as GPF, Leave Encashment etc. could be withheld.

6. In view thereof, the present writ application is disposed of with the directions to the respondents to examine the claim of payment of GPF, Leave Encashment and other dues except pension and gratuity within three months.

(Hemant Gupta, J)

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