

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11974 of 2012

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1. Nageshwar Thakur S/O Late Pradeep Thakur Resident of Village+P.O- Nawada,
Bokane, District- East Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar, through Secretary, Primary Education, Govt. Of Bihar,
Vikash Bhawan, Patna.
2. The Secretary, Primary Education, Govt. Of Bihar, Viaksh Bhawan, Patna.
3. The District Magistrate, East- Champaran, Motihari.
4. The District Education Officer, East- Champaran, Motihari.
5. District Deputy Inspector Of Education, East- Champaran, Motihari.
6. The Block Education Officer, Patahi Block, East Champaran.
7. The Head Master, Patahi Middle School (Boy), Patahi, East- Champaran,
Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sriram Krishna, Adv.
Dr. Kamal Deo Sharma, Adv.

For the Respondent/s : Mr. Kinkar Kumar, SC-9
Mr. Mrigendra Kumar Singh, A.C. to SC-9

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-12-2016

The instant writ application has been filed by the petitioner for directing and commanding the respondent authorities to pay post retirement dues as per revised pay scale of the petitioner with interest and cost.

2. The petitioner was appointed as a trained teacher at Middle School, Rajapur Mahraji, Kalyanpur Block, East Champaran on 2nd December, 1980. After serving for more than 30 years, he retired on attaining the age of superannuation on 31st July, 2011 as Incharge Headmaster, Patahi Middle School (Boys), Patahi, East



Champaran, Motihari.

3. It is contended by the learned counsel for the petitioner that at the time of his retirement, the documents relating to petitioner's arrear pension and other post retirement benefits were sent to the District Education Officer along with all necessary documents but the respondents failed to start paying him pension. However, it is admitted that during pendency of the writ application, the respondents have paid the amount under the head Group Insurance, Provident Fund and Leave Encashment as per revised pay scale and No Dues Certificate for payment of his pension has been issued wherein it has been stated that the gratuity amount of the petitioner shall remain withheld.

4. It is submitted that while in service neither any disciplinary proceeding was initiated nor any criminal case was instituted against the petitioner. Even after retirement no proceeding either under Rule 43(b) or under Rule 139 of the Bihar Pension Rules, 1950 has been initiated against the petitioner and under such circumstance, withholdment of the amount of gratuity is not permissible in law.

5. The State has contested the matter. Learned counsel for the State has submitted that while being posted as In-charge Headmaster of Middle School (Boys), Patahi, the petitioner was the



in-charge of Kansturba Gandhi Girls School. Under the joint signature of the petitioner and the then Block Education Officer Sri Nityanand Thakur, an amount to the tune of Rs.22,30,000/- was withdrawn for construction of the building of Kasturba Gandhi Girls School. Upon enquiry, it reflected that out of the said withdrawal, an amount of Rs.6,38,568/- has been defalcated and, as such, the respondents have withheld the amount of gratuity of the petitioner. On query made by the Court as to whether any criminal case has been instituted or any proceeding has been initiated against the petitioner, learned counsel for the State submitted that in this regard he has no instruction. However, he has contended that a demand has been raised from the petitioner for the aforesaid amount and the petitioner has failed to deposit the amount in question.

6. In reply to the submission made by the learned counsel for the State, learned counsel for the petitioner has submitted that there is no truth behind the allegation of any defalcation. The petitioner's role was limited to sign the cheques and another signatory, the Block Education Officer, was responsible for the construction of the building. He has contended that the Cheque Book and the Bank Pass Book always remained with the then Block Education Officer and while in service no explanation was ever sought from the petitioner in respect of any defalcation. He has



further contended that till date no criminal case has been instituted against the petitioner.

7. I have heard learned counsel for the parties and perused the record.

8. It is well settled that gratuity and pension are hard-earned benefits of the employee and right to receive pension which includes gratuity is in the nature of “property”. An employee earns these benefits by dint of his long continuous and unblemished service. The right to “property” cannot be taken away without due process of law as per provision of Article 300-A of the Constitution of India. Apparently, no proceeding was initiated against the petitioner while he was in service. Further, no action has been taken under the pension rules against the petitioner, who has already retired from service on 31st July, 2011. There is nothing on record to suggest that any criminal case has been instituted against the petitioner for the alleged defalcation. Under the circumstances, the denial of the amount of gratuity merely on the basis of some hypothetical assumption and presumption is unsustainable in law.

9. Accordingly, I direct the respondents to pay the amount of gratuity to the petitioner latest by 21st February, 2017. In case, the respondents fail to pay the amount within the aforesaid period, the amount of gratuity would earn interest at the rate of 8 per cent per



annum from the date it became due till the date of actual payment.

10. With the aforesaid observations and directions, the writ application is allowed but there shall be no order as to costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-12-2016
Transmission Date	

