IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.110 of 2015

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Mathura Prasad, son of Late Tilak Paswan, Resident of village- Patwa Sarai, Police Station- Nawadah (Kadirganj), District- Nawadah

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Nawadah
3. The District Panchayat Raj Officer, Nawadah
4. The District Nazarat Deputy Collector, Nawadah

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Zeyaul Hoda, Advocate
For the Respondent-State:	Mr. Yogendra Pd. Sinha, AAG-7
	Mr. Ram Subhas Singh, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-12-2016

The present writ application has been filed by the petitioner for directing the respondents to fix the pension of the petitioner and to pay the same to him with effect from 30th April, 2013. The petitioner has also prayed for a direction to be issued to the respondents to pay all his post-retiral dues including amount of gratuity, general provident fund, leave encashment and group insurance.

2. The petitioner retired on attaining the age of superannuation on 30th April, 2013 as Head Clerk in the District Panchayat Raj Office, Nawada. The contention of the petitioner is that till date, neither the provisional pension nor final pension of the petitioner has been fixed, nor any other post-retiral dues has been paid to him.

3. It has been submitted by the learned counsel for the petitioner that while he was in service he was implicated in Nawada Town P.S. Case No. 271 of 2002 registered under Sections 408, 409, 467, 468, 471 and 120-B of the Indian Penal Code. However, in the said criminal case, he was acquitted of the charges vide judgment dated 16.12.2015 passed by the learned Additional Chief Judicial Magistrate-III, Nawada. He has contended that for the self-same charges, a disciplinary proceeding was also initiated against him, in which, vide order dated 30th April, 2007, the District Magistrate, Nawada dismissed him from service. Against the said dismissal order, the petitioner preferred an appeal before the Divisional Commissioner, Magadh Division, Gaya and, vide order dated 14th May, 2009, the Divisional Commissioner set aside the order of dismissal passed by the District Magistrate, Nawada. Thereafter, the respondent-State preferred a review petition against the aforesaid order dated 14th May, 2009, which also was dismissed

as not maintainable in law by the Divisional Commissioner, Nawada vide order dated 18th June, 2015.

4. In view of the aforesaid submissions, learned counsel for the petitioner submits that as on date the petitioner is neither facing any criminal prosecution nor any departmental proceeding and denial of the pensionary right to the petitioner by the respondents is highly illegal and arbitrary.

5. In reply, learned counsel for the State has submitted that after the dismissal of the review petition by the Divisional Commissioner on 18th June, 2015, a revision application has been preferred by the respondents-State before the Principal Secretary, General Administration Department and the said application is still pending before him.

6. On query made by the Court regarding the provision of law under which the revision application against the order of the appellate authority has been filed before the Principal Secretary, learned counsel for the State submitted that there must be some provision under the law. The answer given by the learned counsel for the State does not appeal to the Court.

7. At this stage, learned counsel for the State has drawn my attention towards the supplementary counter affidavit filed on behalf of the respondents no. 2 to 4 on 14th December, 2016

wherein, it has been stated that the admissible amount of group insurance, general provident fund and leave encashment of the petitioner have already been sanctioned and paid to the petitioner in his bank account. He has also referred to the averments made in the aforesaid supplementary counter affidavit, wherein, it has been stated that 50% of the admissible pension and gratuity have also been sanctioned and paid to the petitioner. He contended that the remaining fifty percent amount of the pension and gratuity would be paid to the petitioner only after the final outcome of the revision application pending before the Principal Secretary, General Administration Department. It is also contended that against the order of acquittal in criminal case, an appeal has been preferred by the State before the Court of Sessions, which is still pending.

8. In reply, learned counsel for the petitioner submitted that there is no statutory provision which permits the State for filing a revision application against the order passed by the appellate authority. He has contended that the entire action of the respondents in withholding the payment of pension and gratuity is grossly illegal and arbitrary.

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

10. It is well settled that gratuity and pension are not

bounties. An employee earns these benefits by dint of his long, continuous and unblemished service. Right to receive pension has been treated as a right to property. In view of Article 300-A of the Constitution of India, no person can be deprived of his property save by authority of law.

11. Apparently, there is no statutory provision prescribing remedy of revision against an appellate order passed by the appellate authority in a disciplinary proceeding.

12. The right of petitioner to receive pension and gratuity cannot be denied by some executive order passed by the District Magistrate, Nawada and the State has no power to withhold the same in absence of any adverse finding in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence during his service. In the present case, the petitioner has been acquitted by the criminal court and in the disciplinary proceeding the appellate authority has also found him innocent. Under such circumstance, the action of the respondents in withholding part of pension and gratuity of the petitioner cannot be countenanced.

13. Accordingly, the respondents are directed to release the full payment of pension and gratuity to the petitioner

without any delay. In case the same is not paid within two months from today, the payable amount shall earn interest at the rate of 8% from the date it became due till the date of actual payment.

14. With the aforesaid observation and direction, the writ application is allowed but there will be no order as to costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2016
Transmission Date	NA