

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5669 of 2015**

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Gopal Krishna Gupta son of Late Sohrai Sah, Resident of Mohalla- Maulabagh, In front of Gayatri Mandir, Ara, P.S.- Ara, (Town), District- Bhojpur

.... .... Petitioner

Versus

1. The State of Bihar.
2. The Inspector General of Registration-cum-Excise Commissioner, Bihar, Patna.
3. The Deputy Inspector General of Registration, Bihar, Patna.
4. The Assistant Inspector General of Registration, Bihar, Patna.
5. The Deputy Secretary, Finance Department, Bihar, Patna.
6. The District Registrar-cum-District Collector, Bhojpur, Ara.
7. The District Sub- Registrar, Bhojpur, Ara.
8. The Sub- Registrar, Jagdishpur, District- Bhojpur.
9. The Accountant General, Bihar, Birchand Patel Marg, Patna.

.... .... Respondents

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**Appearance :**

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
| For the Petitioner          | : | Mr. Shailendra Kumar Verma, Advocate |
| For the State               | : | M/s Sunil Kr. Mandal, SC 3           |
|                             |   | Bipin Kumar, AC to SC 3              |
|                             |   | Arjun Kumar AC to SC 3               |
|                             |   | Neelam Kumari AC to SC 3             |
|                             |   | Alka Singh AC to SC 3                |
| For the Accountant General: |   | M/s Amar Nath Singh, Advocate        |

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**Date: 20-08-2016**

Heard parties.

The petitioner's grievance is that 25% of his pension has been withheld vide Annexure-9.

A counter affidavit has been filed on behalf of the State categorically stating that 90 % of gratuity and pension have already been authorized to the petitioner, however, even assuming that to be correct, a question which would fall for determination in



the present case would be as to under what provision of law such deduction or action of withholding pension can be done by the State authorities. The petitioner has also raised an issue that in fact impugned Annexure 9 has been issued by the District Sub Registrar, Bhojpur who is not the competent authority to take such decision rather a decision has to be taken by the District Registrar-cum-Collector of the District.

Mr. Sunil Kumar Mandal, learned counsel appearing for the State has submitted that two proceedings are pending against the petitioner. One is a judicial proceeding as the criminal case was filed against the petitioner which is pending and secondly a proceeding under Section 43(b) is also pending.

However, from the counter affidavit, it appears that vide Annexure A, though a departmental proceeding was there upon the petitioner but his suspension was revoked stating that whatever would be decided by a Court of competent jurisdiction in a criminal matter after the decision of the competent court in the criminal matter, a final decision would be taken in the departmental proceeding in accordance with that. Annexure B dated 2.3.2015 also reiterates the same and, thus, 90% of gratuity was authorized and similarly, it is stated in the counter affidavit that 90% pension has also been authorized. However, there is no answer in the counter affidavit that

under what statutory provision, such decision of withholding part of pension and gratuity has been taken.

The issue is no longer *res intergra* having already set at rest by the **Apex Court in State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.[2013(3) PLJR 458 (SC)** holding that withholding of pension even after conclusion of departmental proceeding would only be permissible when a finding is recorded either in the departmental proceeding or in the judicial proceeding that the employee had committed gross-misconduct in discharge of his duty while he was in office.

Admittedly there is no such finding recorded by any competent authority till date and, as such, in my considered opinion, withholding of pension and gratuity is wholly illegal and erroneous.

Accordingly this writ application stands allowed. The State authorities are directed to calculate the entire amount of pension and gratuity and issue sanction order so that authority slip could be issued by the competent authority thereafter.

The entire exercise would be completed within a period of two months from the date of receipt / production of a copy of this order.

It is made clear that in case the petitioner is found to have committed gross-misconduct during his service period either in

a judicial or in a departmental proceeding, then the competent authority would be at liberty to recover such amount of pension as would be held by it to be not payable to the petitioner.

However, petitioner also seeks another relief that he should be paid back the amount which has been deducted in view of the order dated 13.01.2010 passed by the I.G., Registration, Bihar, Patna, a copy of which has been appended as Annexure A. From perusal of Annexure A, it appears that suspension of the petitioner was revoked on the condition that half of the defalcated amount would be deposited by him and on that count his suspension was revoked. Petitioner vide his relief in paragraph 1(c) only wants to refund of such amount which has been deducted from his salary as well as unutilized earned leave but has not challenged the order, as contained in Annexure A, before any competent forum even though the same was passed on 13.01.2010 and, on such deduction only, his suspension was revoked, therefore, now in my considered opinion, after his retirement in the year 2013, he cannot seek such refund of payment till he is exonerated in the judicial proceeding and the departmental proceeding.

So far as the petitioner's grievance of only granting subsistence allowance, during the period when he had remained suspended, is concerned, that issue cannot be considered and decided

in the present case which is only for the purpose of the payment of  
retiral benefits. However, he would be at liberty to raise the same  
before a competent forum but it is made clear that this Court has not  
formed and expressed any opinion regarding that.

**(Dr. Ravi Ranjan, J)**

V.K. Pandey/-

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