IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.448 of 2013

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Ram Prakash Yadav, S/o Late Yadu Lal Yadav, R/o Village- Simra, P.S.- Phulparas, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Special Secretary, General Administration Department, Govt. of Bihar, Patna
4. The Secretary, State Transport Department, Govt. of Bihar, Patna
5. The Accountant General (A&E), Bihar, Birchandra Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Durga Nand Jha, Advocate.

For the State : Mr. Amaresh Kumar Sinha, A.C. to G.A. 1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 20-08-2016

Heard learned counsel for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court claiming writ of *mandamus* for directing the respondents to pay full amount of pension, gratuity and leave encashment.

3. The petitioner attained the age of superannuation on 31st of July, 2012. The grievance of the petitioner is that without initiating any departmental proceedings, some of the retiral benefits, such as, gratuity, leave encashment etc. have been withheld. It is

pointed out by the petitioner that Vigilance Case No. 16 of 2003 dated 16th of September, 2003 stands instituted against Mithila Minority Dental College and Hospital and its authorities in which petitioner and several unknown persons are suspected to be accused. It is also pointed out that the proceedings in the said case have been stayed by the Hon'ble Supreme Court on 12th of January, 2009. Therefore, the said proceedings cannot be taken into consideration for withholding the retiral benefits payable to the petitioner.

4. In the first counter affidavit, the stand of the respondents is that 90 per cent of the provisional pension has been paid and that for giving wrong report in respect of land and building of Mithila Minority Dental College and Hospital, Vigilance P.S. Case No. 16 of 2003 stands lodged against the petitioner. Though it is also mentioned therein that Death-cum-Retirement Gratuity and Leave Encashment stands paid to the petitioner but in the supplementary counter affidavit filed on behalf of Respondent Nos. 2 and 3 dated 19th of August, 2013 it is mentioned that Death-cum-Retirement Gratuity of the petitioner has been withheld in the light of Finance Department Letter No. 9144 dated 22nd of August, 1974 and that the amount of Leave Encashment has also been withheld.

5. Learned counsel for the petitioner vehemently argued that since the proceedings have been stayed by the Hon'ble

Supreme Court, therefore, the criminal proceedings cannot be taken into consideration for withholding the Death-cum-Retirement Gratuity and the Leave Encashment as also the balance pension amount.

6. I do not find any merit in the argument.

7. Rule 43(b) of the Bihar Pension Rules, 1950 contemplates withholding of pension and the expression 'pension' includes Gratuity in terms of Rule 27 of the said Rules. Such pension can be withheld if the departmental proceedings are initiated as well as also the pendency of judicial proceedings if instituted while the Government Servant was on duty either before retirement or in re-employment. Since the First Information Report was lodged when the petitioner was in service, therefore, in terms of Rule 43(b), the pension including gratuity can be withheld.

8. The scope of Rule 43 was 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.), on 30th of June, 2016. It was held to the following effect:-

> "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 withheld 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.

The Supreme Court in ***Jitendra Kr. Srivastava's*** case (supra) proceeded on the assumption that the Notification dated 31.07.1980 is the circular which cannot supplant the substantive rules. The fact that it is not a circular but a notification amending the rules was not brought to the notice of the Court. In fact, the Hon'ble Supreme Court observed that if there is any statutory rule the position would have been different.

Therefore, we find that the reliance of the petitioner on the said judgment that gratuity and leave encashment cannot be withheld cannot be sustained in law."

9. In view of the provisions of Bihar Pension Rules as discussed above, the amount of gratuity and leave encashment can be legally withheld.

10. The grant of stay by the Hon'ble Supreme Court is not an order of quashing of the First Information Report lodged, in which the petitioner is a suspect. The order of the Supreme Court means that there cannot be any further proceedings. Therefore, the judicial proceedings against the petitioner cannot be said to be concluded by virtue of an interim order referred to by the petitioner.

11. In view of the aforesaid judgment in L.P.A. No.

145 of 2014, I do not find any merit in the present writ application. The same is dismissed.

(Hemant Gupta, J)

P.K.P.
N.A.F.R.

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