IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.825 of 2012

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Shyam Nandan Das, aged about 69 years, Son of Late Dular Chand Das, resident of Village-Lalbandi, P.O. + P.S.-Sonbarsa, District-Sitamarhi.

.... ***Petitioner/s***

Versus

1. The State of Bihar.
2. Agriculture Production Commissioner, Bihar, Patna.
3. Director Agriculture, Bihar, Patna.
4. Deputy Secretary, Agriculture Department, Government of Bihar, Patna.
5. Joint Director of Agriculture, Saran (Chhapra).
6. Sub Divisional Agriculture Officer (Gen.), Saran (Chhapra).
7. District Agriculture Officer, Begusarai.
8. Treasury Officer, Saran, Chhapra.
9. Provident Fund Director, Bihar, Patna.
10. Accountant General, Bihar, Patna.

.... ***Respondent/s***

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Appearance :

For the Petitioner/s :Mr. Mukesh Kumar, Adv.
For the State :Mr. Abbas Haider, SC-16
For the Respondent No.10:Mr. Arun Kr. Aru, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 18-07-2016

Heard learned Counsel, appearing on behalf of the petitioner, learned Standing Counsel No.16, appearing on behalf of the State of Bihar, and learned Counsel, appearing on behalf of respondent No.10.

2. The petitioner, in the present application, filed under Section 226 of the Constitution of India, seeks a direction to the authorities under the Agriculture Department, Government of Bihar, Patna, to pay to him full gratuity amount, fix his pension in up-to-date revised scale and also pay to him the General Provident Fund amount with up-to-date statutory interest. The petitioner has also sought for a direction to the concerned authorities for considering his case for grant of 1^{st} and 2^{nd} Assured Career Progression with effect from 09.08.1999, in terms of revision of pension etc.

3. Certain facts are not in dispute. The petitioner was appointed as Agriculture Inspector, on 24.10.1966, in the Department of Agriculture, Government of Bihar, Patna. As per his date of birth, he could have superannuated with effect from 31.01.2001. For some reason or the other, he continued to discharge his duties even after the actual date of his superannuation till 2004. When it was detected that he ought to have retired with effect from 31.01.2001, his continuance thereafter was held to be illegal.

4. In view of the above, the petitioner was made to retire immediately when the fact came to the notice of the authorities with retrospective effect, i.e., with effect from 31.01.2001.

5. On the charge of effecting interpolation made by the petitioner in his service book pertaining to his date of birth, a proceeding was initiated against him under Rule 139 of the Bihar Pension Rules. The Department decided to deduct 15% of amount from the pension of the petitioner in exercise of power under Rule 139 of the Bihar Pension Rules. The correctness of the State Government's decision, to deduct the said amount of 15% from the amount of pension of the petitioner, is not being questioned rather the same has been accepted by the petitioner.

6. The entire amount of gratuity, payable to the petitioner, has, however, been withheld on the ground of pendency of a criminal case against the petitioner, registered as Derni P.S. Case No.49 of 2015, said to have been filed on 12.06.2015, alleging offences punishable under Sections 379 and 409 read with Section 120B of the

Indian Penal Code. The gratuity amount has been withheld by the authorities by invoking circular, dated 31.07.1980, issued by the Finance Department, Government of Bihar, Patna.

7. Learned counsel, appearing on behalf of the State of Bihar, has referred to paragraph 7 of the said circular, dated 31.07.1980, in order to justify the decision of withholding the amount of gratuity during the pendency of criminal case, which would have been otherwise payable to the petitioner.

8. In reply, learned counsel, appearing on behalf of the petitioner, has relied on Supreme Court decision, in case of ***"State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava and Anr."***, reported in ***2013 (3) PLJR (SC) 458***, and has contended that since the Rules do not authorize the authorities to withhold pension on the ground of pendency of a criminal case, by invoking executive instructions, the same cannot be done. In the case of ***State of Jharkhand*** (supra), the said circular, dated 31.07.1980, had fallen for consideration.

9. On perusal of the said circular, dated 31.07.1980, I am of the considered view that even if the circular is taking into account, the same could not have been the ground for withholding the gratuity amount. It is clearly mentioned in paragraph 7 of the said circular that if no departmental proceeding, criminal case or judicial enquiry is pending against an employee of the State Government on the date of his superannuation, then, in no circumstance, pension sanctioning authority shall have the authority to withhold pension. Secondly, learned counsel for the petitioner is perfectly right, while placing reliance upon Supreme Court decision in case of ***State of Jharkhand*** (supra), that on the basis of executive instructions, which have no statutory character, the entitlement of an employee under statutory provision, cannot be taken away or withheld. This is not in dispute that there is no provision for withholding pension or gratuity, under relevant pension Rules, on the ground of pendency of a criminal case that too instituted after superannuation of an employee. The decision of the respondents to withhold the gratuity amount, payable to the petitioner, is apparently beyond jurisdiction, illegal and, therefore, unsustainable in the eyes of law.

10. I, accordingly, direct the respondents to pay to the petitioner the gratuity amount, which he is entitled to.

11. I, accordingly, direct the Director, Agriculture Department, Government of Bihar, Patna, and the Accountant General (A & E), Bihar, Patna, to ensure that the amount of gratuity, which has been sanctioned and which the petitioner is entitled to, be paid to him within a period of two months from today.

12. It is indicated that the Director, Agriculture Department, Government of Bihar, Patna, must issue necessary sanction order in this regard within a period of one month from today, whereafter, the Accountant General (A & E), Bihar, Patna, will require to take steps.

13. So far other claims, raised by the petitioner in the present application, relating to revised pension and Assured Career Progression, the Director, Agriculture Department, Government of Bihar, Patna, is directed to consider the petitioner's claim, if he files his representation in this regard within a period of fifteen days from today.

14. Once the representation is filed by the petitioner within the said period of fifteen days from today, the Director, Agriculture, Government of Bihar, Patna, will be required to dispose the same as expeditiously as possible, preferably within a period of two months from the date of filing of such representation by the petitioner.

15. Accordingly, this application stands partly allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.7.2016
Transmission Date	N/A