IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7705 of 2015

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Dinesh Chandra Dwivedi, Son of late Sarvdeo Dwedi, resident of mohalla- A-208, P.C. colony, P.S.- Kankerbagh, district- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Patna.
3. The Deputy Secretary, General Administration Department, Govt. of Bihar Patna.
4. The Accountant General, Bihar, Patna. .... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Adv.
: Mr. Ramjee Kumar, Adv.
For the Respondent/s : Mr. AAG5-S. Raza Ahmad,
: Mr. Md. Kamil Akhtar, AC to AAG-5.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 02-09-2016

Heard parties.

The petitioner's grievance is that 100% pension, gratuity and leave encashment have not been sanctioned and paid. The petitioner has retired upon attaining the age of superannuation on 31st August, 2009 from the post of DCLR, Saran at Chapra.

Counter-affidavit has been filed from which it appears that departmental proceeding was initiated against the petitioner before his retirement but could not be completed. Obviously, the same has been converted into a proceeding under Section 43(b) of Bihar Pension Rules, 1950.

Learned counsel submits that the petitioner has retired in the year 2009 and even after a lapse of seven years the departmental proceeding could not be completed and the petitioner has been deprived from his retiral dues.

Counter-affidavit filed by the State discloses that 90% of gratuity has also been sanctioned in favour of the petitioner.

However, it is contended on behalf of the petitioner that he does not have any authorization slip by the Accountant General and he is not being paid the aforesaid amount. The issue is no longer rest integra to the Apex Court in the case of Lalit Kumar Prasad Sing & Anr. vs. State Bank of India through its Chairman & Ors. reported in 2013(3) PLJR 451, while noticing and the Rule 43(b) of the Bihar Pension Rules, 1950 held that even after conclusion of the departmental proceeding it is not permissible in law to withhold pension etc. Only after a finding is recorded either in the departmental proceeding or judicial proceeding that the employee has committed gross misconduct in discharge of his duty while in service there can be deduction in pension and gratuity and there is no provision in the Rules for withholding pension/gratuity when such departmental or judicial proceeding is still pending. It has been held that right to receive pension has been recognized as a right to property and initiation of the proceeding cannot form basis of withholding pension without any charge having been proved. Part of pension or gratuity and even leave encashment, without any statutory provision, under the umbrage of administrative instruction cannot be countenanced as executive instructions, without having statutory character, cannot be framed as law within the meaning of Article 310(A) of the Constitution of India. On the basis of a Circular not having force of law, the State Government cannot withhold any part of pension and gratuity.

In my view, the present case is squarely covered by the aforesaid decision of the Apex Court. There is no finding of gross misconduct by the petitioner as yet in the departmental proceeding and seven long years have already passed even after his retirement. Thus, in my view, the State respondents were not at all competent to withhold part of pension and amount of gratuity as well as leave encashment.

Accordingly, this writ application stands allowed.

Respondent no. 2, the Principal Secretary, General Administration Department, Bihar, Patna is directed to take immediate steps for sanction of part of pension, gratuity, leave encashment and other retiral dues. The State authority would also be liable to pay interest upon the aforesaid amount which is permissible in law as per the relevant circular/instruction i.e. Memo No. P.C.-2-1-46/79/3155 dated 07.11.1981.

It is expected that the entire exercise would be completed within a period of two months from the date of receipt/production of a copy of this order before the sanctioning authority. The Accountant General is also required to issue necessary authority slip in this regard within one month thereafter.

(Dr. Ravi Ranjan, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
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