

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2064 of 2015

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1. Daya Nand Ojha Son of Late Jagarnath Ojha Resident of Flat No-101, Chandra Kutir Apartment, Sita Ram Path, West Patel Nagar, P.O - and P.S Shastri Nagar, Town and District -Patna the retired Assistant Executive Engineer, Project and Design Department, Bihar State power Holding Company Ltd. Patna.

.... Petitioner/s

Versus

1. Bihar State Power Holding Company Ltd Bailey Road, Patna through the Chairman-cum-Managing Director.
2. The Chairman-cum-managing Director, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
3. The Joint Secretary, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
4. The Finance Controller, Bihar State Power Holding Company Ltd., Bailey Road, Patna
5. The Chief Engineer (Project and Design), Bihar State Power Holding Company Ltd., Bailey Road, Patna.
6. The Senior Manager (Finance and Account), Headquarter Bihar State Power Holding Company Ltd., Bailey Road, Patna.
7. The Accounts Officer, Bihar State Power Holding Company Ltd., Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
For the Respondent/s : Mr. Sunil Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 11-05-2016

Heard Mr. S.B.K.Manglam for the petitioner and
Mr. Sunil Kumar for respondent- Bihar State Power Holding
Company Ltd. (for short 'the Company') and its functionaries.

A counter affidavit on behalf of the respondent nos.
2 to 7 is filed.

The petitioner questions the legality/pregnability of

the order dated 18.01.2013 issued by the respondent no.3 (Annexure-2) whereby the petitioner was sanctioned only 90% (provisional pension) and the sanction of the gratuity amount was withheld on the ground that the petitioner is facing a criminal prosecution vide CBI case no. RC- I(A)03 Pat while he was in service.

The writ application asserts that the petitioner served the erstwhile Bihar State Electricity Board (now the Company) as Junior Engineer since 1980 and superannuated from service on 31.12.2012 as Assistant Executive Engineer. While serving the Company, an FIR was lodged by the CBI in which after conclusion of investigation, charge sheet was submitted and the petitioner is now facing trial arising out of the said case. Upon superannuation, he applied for sanction of pension/gratuity. The respondents, by the impugned order (Annexure-2) sanctioned only 90% (provisional) pension and withheld sanction of the gratuity amount. The petitioner relies on the judgment of the Hon'ble Apex Court since reported in **2013(3) PLJR SC 458**, a copy whereof is also enclosed as Annexure-3. It is stated that in identical circumstances, the Hon'ble Apex Court, held that only on account of pendency of the criminal proceeding, the employee cannot be denied the pension/gratuity particularly, in view of the provisions contained in Rule 43(b) of the Bihar Pensions Rules and the provisions

contained under Article 300 A of the Constitution of India. The Apex Court in doing so relied on celebrated judgment of **D.S. Nakara & Ors. vs. Union of India 1983 (1) SCC 305= 1983(1) LLJ 104** as well as **Deokinandan Prasad Vs. The State of Bihar & Ors., 1971 (2) SCC 330** and concluded as under:-

“14. Article 300A of the Constitution of India reads as under:

“300A Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

The counsel for the respondent- Company has relied on a circular issued by the erstwhile Bihar State Electricity Board



(Annexure-B) in order to contend that the circulatory provisions of the Board prohibits grant of full pension/gratuity during pendency of the criminal proceeding initiated while the employee was in the service. As noted above, the Hon'ble Apex Court has negated such claim of the appellant of the said case after noticing the submissions of the appellant as evident from paragraphs 5 to 6 and expressed the view extracted hereinabove.

However, this Court would notice that under Rule 139 of the Bihar Pension Rules the power of review/revision is conferred on the State to make appropriate orders if the service of the employee is ultimately not found satisfactory. Conviction in the criminal case, if recorded, may be a circumstance for the respondents to review the order for grant/sanction of full pension/gratuity.

Taking into consideration the facts and circumstances of the case, the law laid down by the Hon'ble Apex Court in the case of **D.S. Nakara and Deokinandan Prasad** (supra) as also the provisions contained in Rule 139 of the Bihar Pension Rules this Court, while setting aside the relevant part/portion of the order (Annexure-2) under challenge would direct the respondents to sanction 100% pension as well as 100% gratuity amount provisionally in favour of the petitioner within five weeks from the date of receipt/production of a copy of this order before the

concerned respondent providing them adequate jurisdiction to pass appropriate order U/s 139 of the Bihar Pension Rules if so advised in case conviction is ultimately recorded against the petitioner in the pending trial/case. Be it noted that when the order was dictated the counsel for the petitioner, states that for payment of the leave encashment amount the petitioner shall make a representation before the concerned respondent(s). He may do so enabling the respondents to consider and dispose of the same in accordance with law.

(Kishore Kumar Mandal, J)

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