IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.499 of 2017

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Rajeshwar Prasad Singh son of Late Julam Singh, resident of village- Desri, P.S.- Desri, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education Govt. of Bihar, Patna.
3. The District Programme Officer(Establishment), Vaishali.
4. The District Treasury Officer, Vaishali.
5. The Accountant General, Birchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the State : Mr. Ranjan Kumar, A.C. to G.A-12

For the Accountant General : Mr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-10-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. The present writ petition has been filed by the petitioner for direction to the respondents to pay amount of gratuity against the authorization issued by the Accountant General, Bihar, Patna vide G.P.O. No.201511141328GO.

3. From the pleadings of the parties it stands admitted that after retirement of the petitioner sanction for payment of pension and gratuity were already sent to the Accountant General, Bihar, Patna for issuance of authorization pursuant whereof the Accountant General, Bihar, Patna has already issued Pension Payment Order and Gratuity Payment Order. It is also an admitted case of the parties that the petitioner has already been paid pension, commuted amount of pension and leave encashment.

4. The contention of the learned counsel for the State is that as amount of rupees nine lac sixty four thousand and seven hundred is recoverable from the petitioner for whcich a disciplinary proceeding was initiated against him while he was in service and he was also issued a show cause notice pursuant to which he submitted his reply, though his other dues were paid, the payment of gratuity has been withheld.

5. On the other hand, learned counsel for the petitioner submitted that in view of the proceeding initiated against the petitioner, the petitioner had already submitted his show cause on 20.06.2013 and till his superannuation on 31.07.2014, no further step was taken in the disciplinary proceeding. It is presumed that the cause shown by the petitioner was accepted and the respondents dropped the proceeding. He submitted that from the conduct of the respondents also it would appear that they never intended to proceed with the disciplinary proceeding against him in terms of Rule 43(b) of the Bihar Pension Rules as they already sanctioned his full pension and full gratuity after superannuation. Hence, withholdment of gratuity is arbitrary and illegal.

6. Having heard the parties, I find force in the submissions of the learned counsel for the petitioner.

7. By now, it is well settled that gratuity is hard earned benefit of an employee and such benefit cannot be taken away from a government employee without adopting due process of law.

8. Since the Director, Primary Education, Government of Bihar, Patna has already sanctioned full and final gratuity and pension after his retirement, which have also been authorized by the office of the Accountant General, Bihar, the action of the respondents in withholding payment of gratuity in absence of any order passed in any proceeding under the Bihar Pension Rules is wholly illegal, arbitrary and unjustified.

9. Accordingly, I direct the District Programme Officer (Establishment), Vaishali (respondent no.3) to make payment of duly sanctioned and authorized gratuity to the petitioner, as early as possible, but not later than three months from the date of receipt/production of a copy of this order. In case, the respondent no.3 fails to pay gratuity to the petitioner within the afore-stated period of three months, the admissible amount of gratuity would earn interest at the rate of seven per cent per annum from the date it became due till the date of actual payment. In such case of payment of interest, the State Government shall be at liberty to recover the amount of interest from the officer/officers responsible for the delay caused in payment of amount of gratuity in accordance with law.

(Ashwani Kumar Singh,J.)

Md.S./-

AFR/NAFR	NAFR
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