IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2036 of 2016

In

Civil Writ Jurisdiction Case No.17865 of 2015

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Ram Sevak Ram, son of Late Saryug Ram, resident of Village- Dadar Kolhua, P.O.- Bairiya, P.S.- Ahiyapur, District- Muzaffarpur.

... ... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
5. The Senior Superintendent of Police, Muzaffarpur.
6. The Conducting Officer-cum- Superintendent of Police, Sitamarhi.
7. The Superintendent of Police, Town, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Jha, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma- AAG-3
		Mr. Saroj Kumar Sharma, A.C. to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-12-2017

Seeking exception to an order dated 09.09.2016 passed by the learned Writ Court in C.W.J.C. No. 17865 of

2015, this appeal has been filed under Clause 10 of the Letters Patent.

Appellant was working in the Police Department. He was inducted as a clerk in the year 1973 and retired on attaining the age of superannuation on 30th of June, 2011 where he was posted as Head Clerk in the office of Superintendent of Police, Muzaffarpur. An F.I.R. was lodged against five persons including the appellant for offence under Sections 409, 420, 467, 468, 471 and 120B I.P.C. read with Section 13(C) of the Prevention of Corruption Act and the allegations were made with regard to preparation of salary bill for the month of September, 2010. Investigation into the F.I.R. was pending when the appellant retired from service. When his pensionary claims including gratuity were not settled, he represented and when the representation was not considered, the writ petition was filed. The Writ Court found that provisional pension has already been made available to the appellant and as serious allegations are levelled against him, dismissed his writ petition.

The question before us is as to whether the pensinary benefit of the appellant can be withheld on account of mere pendency of a criminal case.

Settlement of pension of employees working in the department are governed by the Bihar Pension Rules, 1950 and Rule 43(b) of the Bihar Pension Rules reads as under:-

> "43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:
>
> Provided that-
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> (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
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> (i) shall not be instituted save with the sanction of the State Government;
>
> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
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> (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure

applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation- For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him, or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

From the aforesaid, it is seen that withholding or withdrawing of pension in full or part is permissible only in cases where the employee is found guilty in a departmental proceeding or a judicial proceeding. In the present case, it is an admitted position that till date the appellant is not found guilty either in any departmental proceedings or in any criminal case. Only an F.I.R. has been lodged and the matter is pending. That being so, Rule 43(b) cannot be invoked in the case of the appellant for withholding his pension.

When *prima facie* this ground was found to be established while hearing the matter on 15.05.2017, learned counsel representing the State Government pointed out that pension can be withheld under Rule 43 (C) of the Bihar Pension Rules. However, it was found that this rule was brought into force by an amendment which was incorporated and made effective from 19.07.2012 and on 10.07.2017 this Court wanted the State Government to clarify as to how the amended provisions of Rule 43 (C) can be made applicable in the case of the appellant who had retired in the year 2011, much prior to coming into force of the amended provision.

The State Government has filed a counter affidavit in this regard on 21st of July, 2017 and in the said counter affidavit they admit that the provisions of Rule 43 (C) cannot have retrospective effect.

If that be so, the question is as to under what provision of law the pension or gratuity can be withheld and learned counsel for the State invited our attention to a circular dated 22.08.1974 (Annexure-E) to say that under this circular the pension and gratuity can be withheld. However, a perusal of this circular goes to show that it pertains to payment of pension to Government servants who are under suspension or against whom judicial or departmental proceedings or inquiry have not been concluded on the date of their compulsory retirement. In the present case, neither was the appellant suspended nor has he been compulsorily retired by way of punishment. Therefore, this circular will not apply. Admittedly, the pension and gratuity of the appellant can be withheld only if the statutory rule governing grant of pension permit so and the only statutory rule applicable for this is Rule 43 (C) which was brought into force by amending Act with effect from 19.07.2012 and as this statutory provision does not have any retrospective effect, we are of the considered view that merely because the criminal case or the departmental proceedings were pending, the State cannot withhold the gratuity or pension.

Even though during the course of hearing Sri Verma, learned counsel for the State tried to vehemently argue that when criminal cases are pending or departmental proceedings are pending, pension can be withheld but he is unable to bring to our notice any statutory rule or regulation permitting so. Admittedly, up to 19.07.2012 there was no statutory provision and faced with the difficulty, the State Government incorporated the amendment in the pension rules and brought into force Rule 43 (C) for the same purpose.

Once it is an admitted position that the only provision permitting withholding of pension or gratuity is Rule 43 (C) and the same has no retrospective effect, we see no reason as to why the prayer of the appellant should have been rejected. The learned Writ Court has simply rejected the matter without taking note of the statutory provision. Pension and gratuity is a right of an employee and it could be withheld only in accordance to the statutory or legal provisions applicable. In the present case as the statutory provision does not permit withholding of pension or gratuity until and unless the employee is found guilty in the criminal proceeding or the departmental case, we see no reason to reject the prayer of the appellant.

Accordingly, the Letters Patent Appeal is allowed, order dated 09.09.2016 passed by the learned Writ Court in C.W.J.C. No. 17865 of 2015 stands quashed, the writ petition is allowed. Respondents are directed to pay to the appellant all his pensionary benefits including pension and gratuity within a reasonable period of time.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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