IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6749 of 2014

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Suresh Kumar Verma Son Of Late Ram Prasad Singh Resident Of Nayatola, Ram Kinkar Lane, Near Polytechnic, Muzaffarpur, P.S. - Kajimohamadpur, P.O. + District - Muzaffarpur.

.... Petitioner

Versus

1. The Bihar State Power Holding Company Limited, Through Its Chairman-Cum-Managing Director, Vidyut Bhawan, Patna.
2. The Chairman-Cum-Managing Director, The Bihar State Power Holding Company Limited, Vidyut Bhawan, Patna.
3. The Joint Secretary, Bihar State Power Holding Company Limited, Vidyut Bhawan, Patna.
4. The Senior Manager (B & L), North Bihar Power Distribution Co. Ltd., Patna.
5. The Accounts Officer, Electric Supply Circle, Muzaffarpur.
6. The Electrical Superintending Engineer, (Store Verification), Bihar State Electricity Board, Vidyut Bhawan, Patna.
7. The Electrical Executive Engineer, Electrical Central Store, Muzaffarpur.

.... Respondent

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Appearance :
For the Petitioner/s : Mr. Ajay Kumar, Advocate
For the Respondent/s : Mr. Sanjay Kumar Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-03-2017

In the instant writ application, the petitioner has prayed for quashing of the part of the order as contained in Memo No.26, dated 13.03.2014 (Annexure-9) by which a total sum of Rs.6,50,208/- has been ordered to be recovered on account of discrepancies in Store and for which a sum of Rs.3,50,000/- has been adjusted from his gratuity. The petitioner has further prayed for quashing of the order/direction contained in his pension payment order, i.e. Pen/53/2014, No. 26, dated 13.03.2014 by which it has been ordered to deduct Rs.3,00,208/- from the arrear of pension and if still there remains outstanding then to recover from the pension at the rate of Rs.2000/- per month. Further, the prayer of the petitioner is to direct the respondent authorities to pay his full pension, full gratuity, remaining ten percent pension due since 01.07.2006 along with 5 per cent interest and to award cost for pushing him into uncalled for and unnecessary litigation.

2. The brief facts of the case are that the petitioner superannuated on 30.06.2006 while working as Senior Store Keeper, Electrical Central Store Muzaffarpur. While he was in service, no departmental or judicial proceeding was pending against him. Even after his retirement, no proceeding was initiated against him under the Bihar Pension Rules, 1950 (for short 'Pension Rules').

3. It is submitted by the learned counsel for the petitioner that though the petitioner has received amount of general provident fund and group savings scheme and ninety per cent of provisional pension, his ten per cent of pension and full gratuity has

been withheld by the respondents. He submitted that after retirement of the petitioner, upon being satisfied, the respondent no. 7 had issue 'no dues certificate' to him vide letter no. 60 dated 29.08.2006. But, subsequently, in the name of some discrepancies in the Store, the respondents have illegally and arbitrarily directed to recover an amount of Rs.3,50,000/- from his gratuity and Rs.3,00,208/- from his pension.

4. *Per contra*, learned counsel for the respondent-Bihar State Power Holding Company Limited (for short 'Company') submitted that on 04.04.2013, the Electrical Superintending Engineer sent information regarding store discrepancy worth Rs.11,99,925/-. He submitted that the matter in respect of store discrepancy has already reported to the police. He submitted that after submission of discrepancy report, it has been decided to recover fifty per cent of the total value of discrepancy from the pending retiral benefits of the petitioner and, accordingly, impugned order (annexure-9) was passed under the signature of respondent no. 4 whereby directions have been made to recover Rs.3,50,000/- from the gratuity amount of the petitioner and Rs.3,00,208/- from his pension. He submitted that the aforesaid decision has been taken pursuant to the executive instruction of the Board. He submitted that in view of the shortfall in the Store

having been noticed in the year 2013, the petitioner would not be entitled to receive the amount being claimed in the present writ application.

5. I have heard learned counsel for the parties and perused the record.

6. From the pleading of the parties, it would be evident that the Company is denying the payment of ten per cent pension and part of gratuity of the petitioner because of some discrepancies found in the materials of the Store from where the petitioner retired. It is an admitted position that no departmental or judicial proceeding was initiated against the petitioner while he was in service. It is also an admitted position that even after retirement, no proceeding under the Pension Rules, which has been adopted by the Company, has been initiated against the petitioner.

7. That part, though the petitioner retired on attaining the age of superannuation on 30.06.2006, the Electrical Executive Engineer (respondent no. 7) under whom the petitioner was serving issued 'no dues certificate' to him immediately after his retirement. Thus, the petitioner had become entitled to receive all retiral benefits in the year 2006 itself. However, for reasons not known to the petitioner, the respondents withheld his ten percent pension and gratuity amount for more than nine years. It would be

evident that for the first time, the respondents came to know on 04.04.2013 that there were discrepancies in the materials of the Store. There was no reasonable explanation as to why such discrepancies could not be detected by the respondents while the petitioner was in service or even immediately after his retirement. The ground taken by the respondents for denying ten per cent pension and full gratuity on the basis of such a belated report submitted by the Electrical Superintending Engineer on the strength of an executive instruction primarily appears to be an afterthought.

8. It would be of salience to note here that Rule 43 and Rule 139 are only the provisions under the Pension Rules on the basis of which the Company could have exercised the right of withholdment or recovery of any amount from the retiral benefits of the petitioner.

9. For ready reference the aforesaid Rules 43 and 139 of Pension Rules are extracted hereunder :-

> "**Rule 43 (a)-** Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole

or any part of a pension under this rule, shall be final and conclusive.

(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-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(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

(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 he 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.

(c)- Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90 % (ninety percent).

Rule-139. (a) The full pension admission under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

10. From perusal of the aforesaid Rule 43(a) of Pension Rules, it would be evident that future good conduct is an implied condition of every grant of pension. Further, from perusal of Rule 43(b) of Pension Rules it would be evident that if an employee 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 rendered or reemployed after retirement, only then, the State would be competent to withhold or withdraw a pension or any part of it or recover from a pension of the whole or part of any pecuniary loss caused to Government. Similarly, Rule 43(c) of Pension Rules confers the power upon the State to pay provisional pension to the employee where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against the employee, initiated during his service period, is not concluded till his retirement. However, in such case also, the amount of provisional pension shall not be less than 90 % (ninety percent).

11. As far as Rule 139 of Pension Rules is concerned, it empowers the State and the pension sanctioning authorities to decide the question whether full pension should be allowed to an employee or not. If his service is not found to be thoroughly satisfactory, appropriate, reduction in the pension can

be ordered by the pension sanctioning authority. Further, if it is found that the service of the employee was not thoroughly satisfactory or that there is proof of gross misconduct on his part while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority.

12. Admittedly, there is no complaint to the conduct of the petitioner. He has not been found guilty of grave misconduct either in departmental or Judicial proceeding. There is also nothing to suggest that he caused any pecuniary loss to Government by misconduct or negligence during he rendered his services.

13. Similarly, it is not the case of the respondents that any adverse entry has been made in the service book of the petitioner while he was in service. Hence, by no stretch of imagination, it can be argued that the services of the petitioner were not thoroughly satisfactory or that there was proof of gross misconduct on his part while he was in service.

14. Having noticed the statutory Pension Rules governing the case of a retired employee, when I look to the facts of the present case, in my opinion, neither the pension sanctioning authority nor any superior authority of the respondent-Company could have exercised the power to withhold pension or gratuity of

the petitioner or recover any amount from his retirement benefits.

15. At this stage, it would be relevant to note that in ***State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava & Anr. [(2013) 12 SCC 210]*** , the Hon'ble Supreme Court observed that gratuity and pension are hard earned benefits of an employee and right to receive pension is in the nature of "property". It has held that this right cannot be taken away from a Government employee without the due process of law as per the provisions of Article 300-A of the Constitution of India.

16. In the light of the discussion made above and the ratio laid down by the Hon'ble Supreme Court, I am of the opinion that the action of the respondents in withholding the part of the pension and gratuity in case of the petitioner is wholly illegal, arbitrary and without jurisdiction.

17. Consequently, this writ application is allowed. The impugned order as contained in Annexure- 9 to the present writ application is hereby quashed. I direct the respondent-authorities to pay the remaining amount of ten per cent of pension and unpaid gratuity to the petitioner with five per cent interest from the date it had fallen due till the date of its actual payment. The petitioner would also be entitled to receive Rs.20,000/- (twenty thousand only) as cost of litigation. The aforesaid amount with interest and

cost must be paid to the petitioner within three months from the date of receipt/production of a copy of this order, failing which the petitioner would be entitled to receive interest over the unpaid amount of pension and gratuity at the rate of eight per cent per annum.

18. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04 .03.2017
Transmission Date	NA