

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1412 of 2015
IN
Civil Writ Jurisdiction Case No. 4800 of 2014**

- =====
1. The State of Bihar
 2. The Secretary, Department of Agriculture, Bihar, Patna.
 3. The Director of Agriculture, Bihar, New Secretariat, Patna.
 4. The Joint Secretary, Department of Agriculture, Bihar, Patna.
 5. The Deputy Secretary, Department of Agriculture, Bihar, Patna.
 6. The Assistant Agronomist Adoptable Research Centre, Sikandra, Jamui.
 7. The District Magistrate, Jamui.
 8. The District Magistrate, Munger.
 9. The Treasury Officer, Jamui.
 10. The Treasury Officer, Munger.

.... Appellants

Versus

1. Naresh Mohan Sinha Son of Late Dashrath Prasad Mehta, Resident of Gayatri Nagar, Sidharth Cinema Road, P.S. - Kotwali, P.O. - Purabsarai, Munger.
2. The Accountant General, Bihar, Patna.

.... Respondents

=====

Appearance :

For the Appellants : Mr. Ramadhar Singh, GP-25

For the Respondent No1.: Mr. Indu Bhushan, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 06-02-2017

A very detailed consideration has been made by the Division Bench in L.P.A. No. 145 of 2014, which is the case of Vijay Kumar Mishra Vs. The State of Bihar and others decided on 30.06.2016.

The Division Bench has come to a considered opinion that the State authorities do have the power to withhold gratuity and some amount of pension due to pendency of either a departmental proceeding or a criminal case against an employee. The Division



Bench has also considered the decision of the Hon’ble Supreme Court which was sought to be relied on behalf of the private respondent which was the case of *State of Jharkhand Vs. Jitendra Kumar Srivastava*, reported in (2013) 12 SCC 210. The Division Bench has distinguished the said decision keeping in mind the notification dated 31.07.1980, which has been held to be statutory in nature and not a mere administrative notification. A fact not brought to the notice of the Hon’ble Apex Court which led to the laying down of law in *Jitendra Kumar Srivastava’s* case (supra).

For the rationale and reasoning provided by the Division Bench, therefore, in the case of Vijay Kumar Mishra, the appeal of the State has to be allowed. The impugned order of the learned single Judge dated 16.10.2014 passed in C.W.J.C. No. 4800 of 2014 needs to be set aside as it does not lay down the correct law on the issue of right of the State authorities to withhold the gratuity and pension of such kind of employees.

The appeal is allowed. Impugned order dated 16.10.2014 is set aside.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.02.2017
Transmission Date	N/A

