

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14584 of 2012

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Rama Nand Lal S/O Late Brahm Deo Lal R/O Indrapuri, Sipara, P.S.- Beur
(Phulwari Sharif) Distt.- Patna.

.... Petitioner

Versus

1. The State of Bihar through Secretary Road Construction Dept., Govt. Of Bihar, Patna
2. The Executive Engineer, Dept. of Road Construction, Road Division, Buxar
3. The Assistant Engineer/Sub-Divisional Officer Dept. of Road Construction, Road Sub-Division, Dumrawn
4. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Manoj Kumar Ambastha, Advocate
Mr. Rakesh Bihari Sharan, Advocate
For the State : Mr. Anshuman Singh, AC to PAAG-1
For Accountant General : Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-04-2017

The present writ application has been filed by the petitioner for following reliefs:-

- (i) To pay arrears of remaining 10 per cent pension since 01.11.1998 to 31.10.2008.
- (ii) To pay arrears of full pension since 01.11.2008 till date.
- (iii) To pay arrears of remaining 10 per cent



gratuity amount.

(iv) To pay the entire leave encashment amount.

(v) To pay arrears of difference of salary since 01.03.1989 to 31.10.1998.

(vi) To pay arrears of salary since 01.12.1993 to 31.03.1994.

(vii) To issue 'No Dues Certificate' in favour of the petitioner.

(viii) To grant interest on above mentioned dues at the rate of 12 per cent per annum.

2. At the outset, Mr. Sandeep Kumar, learned counsel for the petitioner sought leave to seek relief nos. (v) and (vi) of the present application by way of filing another writ application as those reliefs relate to payment of salary matter which subject is not assigned to this bench.

3. Leave is granted.

4. It is submitted by the learned counsel for the petitioner that the petitioner, a Junior Engineer, in the Public Works Department, Government of Bihar, after serving for almost 30 years from services on 31.10.1998 while being posted at Road Sub-Division, Dumraon under Road Division, Buxar. He submitted that during his entire service career, no proceeding was ever initiated against him. He submitted that even after his retirement, no action



has been taken against him by the respondents for withholdment or recovery of pension under the Bihar Pension Rules, 1950. He submitted that after retirement, the petitioner was paid only 90 per cent provisional pension and gratuity upto October, 2008 and no cash equivalent of leave salary has been paid to him. He submitted that even the provisional pension was stopped with effect from November, 2008. He submitted that when the petitioner went to receive his pension from Treasury Office in November, 2008, he was asked by the Treasury Officer to submit 'No Dues Certificate' from his department. Whereafter he represented to respondent no. 2 vide application dated 04.12.2008 to issue him 'No Dues Certificate' and send the same to the Treasury Office, Sinchai Bhawan. But, despite lapse of so many years, the respondents did not issue 'No Dues Certificate' to the petitioner.

5. *Per contra*, Mr. Anshuman Singh, learned Assistant Counsel to PAAG-1 for the State submitted that while the petitioner was in service, he failed to submit account of 297.152 MT. of bitumen worth Rs.14,15,929/- and therefore 297.152 MT of bitumen remained unadjusted against the petitioner till his retirement. He submitted that apart from this, Rs.53,726.15/- is also found due on the petitioner related to Vaishali Road Division, Hazipur for which a separate case under Public Demand Recovery



Act has been filed in the court of Certificate Officer, Vaishali. Apart from the aforesaid two dues against the petitioner, Rs.1,28,321.88 of Road Sub-Division, Buxar was also found due against him. He submitted that the petitioner was regularly reminded for giving details of bitumen account but he did not submit the account till date. He submitted that after retirement, the petitioner did not submit his pension paper for sufficiently long time and on much persuasion and repeated attempts, he submitted pension paper in the year 2007, i.e. after more than eight years from the date of retirement by way of filing representation and on receipt of pension paper from the petitioner, it was sent to the Accountant General, Bihar vide letter no. 1279 dated 16.09.2008 for fixation of final pension and gratuity of the petitioner. He submitted that the Accountant General, Bihar has sanctioned final pension of the petitioner, but in absence of 'No Dues Certificate', the petitioner is not being paid his pension by the Treasury Officer.

6. On query, learned counsel for the State admitted that neither any departmental proceeding nor any judicial proceeding was initiated against the petitioner while he was in service nor he was facing any action under the applicable pension rules. He also submitted that the petitioner has been paid 90 per cent provisional pension upto 31.10.2008. On further query, he



failed to satisfy the Court as to how provisional pension could be sanctioned and authorized for payment in absence of any application from the petitioner in this regard.

7. In reply, learned counsel for the petitioner submitted that allegations made by the State in respect of non-furnishing of bitumen account or any other due against the petitioner are false. The petitioner had accounted for entire bitumen which were handed over to him during his service period itself. He submitted that proper receipts of bitumen account have also been brought on record by way of filing rejoinder to the counter-affidavit filed on behalf of the State. In respect of other dues also, no show-cause was ever asked from the petitioner while he was in service.

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

9. It would be evident from the pleadings of the parties that the entire service record of the petitioner was unblemished and after retirement also, the respondents never chose to proceed against him under the relevant provisions of the Pension Rules for withholdment or recovery of amount of pension or gratuity.

10. It is shocking to note here that an employee, who retired way back in 1998, is not being paid any amount of



pension since November, 2008. It is equally shocking that even prior to that he has been paid only 90 per cent provisional pension and gratuity. There is also no reason as to why cash equivalent of leave salary has not been paid to the petitioner after his retirement from services.

11. The general provisions regarding grant of pension are incorporated in Chapter III of the Bihar Pension Rules, 1950. The payment of pension to a Government servant against whom a departmental or judicial proceeding or enquiry have been taken up is dealt with in **Rule 43(b)** and **(c)** of the aforesaid Pension Rules.

12. **Rule 43(b)** of the aforesaid Rules empowers the State Government to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and to recover 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 rendered including the service rendered on reemployment after retirement. The proviso to **Rule 43(b)** of the aforesaid Rules further stipulates that such departmental proceedings, if not instituted while the Government servant was on



duty either before retirement or during reemployment shall not be instituted save with the permission of the State Government and such sanction shall not be accorded in respect of an event which took place more than four years before institution of such proceeding. It further contemplates that the proceeding shall be conducted in accordance with the procedure applicable to the proceedings on which an order of dismissal from service may be made.

13. Further, **Rule 43(c)** of the aforesaid Rules confers power upon the State Government to pay provisional pension to the Government servant where the departmental or judicial proceeding, in which the prosecution sanctioned and initiated against such servant is not concluded till his retirement. However, in such case also the amount of provisional pension shall in no case be less than ninety per cent.

14. Having noticed the statutory rules governing the case of retired Government servant, when I look to the facts of the present case, it would be evident that it is an admitted fact that no departmental proceeding was initiated against the petitioner while he was in service. Even after his retirement on 31.10.1998, no proceeding was initiated against him under the relevant Pension Rules. He has never ever been held guilty of causing any loss to the



Government by misconduct or negligence. Even the full pension of the petitioner has been sanctioned way back in the year 2008 itself. The only plea on which the claim of pension of the petitioner is being denied is non-production of 'No Dues Certificate' issued by the competent authority.

15. In the opinion of this Court, the aforesaid plea of the respondent State for denying the pension of the petitioner cannot be held to be justified. As more than 18 years have elapsed since the date of retirement of the petitioner, the respondents are debarred from proceeding in any manner against the petitioner under the relevant Pension Rules.

16. In that view of the matter, if there is any requirement of 'No Dues Certificate' for release of pensionary benefits, the authority competent to issue 'No Dues Certificate' has no other option but to issue 'No Dues Certificate' in favour of the petitioner.

17. The benefit of pension is hard earned money of a Government employee and is not a bounty has repeatedly been held by the Supreme Court in its various judgments.

18. In **D. S. Nakara vs. Union of India [(1983) 1 SCC 305]**, the Supreme Court observed as under:-



“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why, was it required to be liberalized? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answers to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad v. State of Bihar, 1971 (Supp) SCR 634 : (AIR 1971 SC 1409)* wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying



the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*, (1976) 3. SCR 360 : (AIR 1976 SC 667)”

19. Recently, in **State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava [(2013) 12 SCC 210]**, the 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 held that this right cannot be taken away from a Government employee without due process of law as per the provisions of Article 300-A of the Constitution of India.

20. Having regard to the discussions made, hereinabove, I am of the opinion that action of the respondent authorities in withholding the pension, gratuity and leave encashment of the petitioner is wholly, illegal, arbitrary and unwarranted in law.

21. Accordingly, I direct respondent no. 2 the Executive Engineer, Department of Road Construction Division, Buxar to issue ‘No Dues Certificate’ in favour of the petitioner within two weeks from the date of receipt/production of a copy of



this order. I further direct the respondents to ensure that payment of the following dues to the petitioner is made within three months from the date of receipt/production of a copy of the order :-

- (i) Arrears of remaining 10 per cent pension since 01.11.1998 to 31.10.2008.
- (ii) Arrears of full pension since 01.11.2008 till date.
- (iii) Arrears of remaining 10 per cent gratuity amount.
- (iv) Entire admissible leave encashment amount.

22. Apart from the aforesaid payments, I also direct the respondents to pay a lump sum amount of Rs.1,00,000/- (Rupees one lakh) as interest over the dues amount within the aforementioned period of three months.

23. It is made clear that if the aforesaid payments are not made within the stipulated period of three months from the date of receipt/production of a copy of this order, the petitioner shall also be entitled to receive Rs.1,00,000/- (rupees one lakh) as cost from the respondent State of Bihar. In such an eventuality, the State shall be at liberty to recover the amount of cost from the officer(s)/employee(s) responsible for causing delay in payment of



the amount in accordance with law.

24. With the aforesaid observations and directions,
the writ application is disposed of.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2017
Transmission Date	NA

