

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1462 of 2016
IN
Civil Writ Jurisdiction Case No. 2064 of 2015

- =====
1. Bihar State Power Holding Company Ltd Bailey Road, Patna through the Chairman-cum-Managing Director.
 2. The Chairman-cum-managing Director, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
 3. The Joint Secretary, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
 4. The Finance Controller, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
 5. The Chief Engineer (Project and Design), Bihar State Power Holding Company Ltd., Bailey Road, Patna.
 6. The Senior Manager (Finance and Account), Head Quarter, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
 7. The Accounts Officer, Bihar State Power Holding Company Ltd., Bailey Road, Patna.

.... Appellants

Versus

Daya Nand Ojha Son of Late Jagarnath Ojha Resident of Flat No-101, Chandra Kutir Apartmnt, Sita Ram Path, West Patel Nagar, P.O - and P.S Shastri Nagar, Town and District -Patna the retired Assistant Executive Engineer, Project and Design Department, Bihar State power Holding Company Ltd., Patna.

.... Respondent

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Appearance :

For the Appellants :	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Vijay Kr. Verma, Advocate
For the Respondent:	Mr. Dineshwar Mishra, Advocate Mr. Surendra Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 05-12-2017



Heard learned senior counsel for the appellants and learned counsel for the private respondent.

Submission of learned senior counsel is that the learned Single Judge has committed an error of law by allowing 100% pension and gratuity by going into the principle of law relating to pension laid down in the case of ***D.S. Nakara & Ors. vs. Union of India*** reported in ***1983 (1) SCC 305*** and ***Deokinandan Prasad vs. The State of Bihar and Ors.*** reported in ***1971 (2) SCC 330***.

What has been missed out by learned Single Judge is that under Rule 43 of the Bihar Pension Rules an amended provision i.e. sub-rule (c) has been added which authorizes the authority to withhold pension and gratuity in a case where a departmental proceeding or a criminal proceeding is pending against an employee.

In the present case, criminal case has been instituted by the C.B.I. for which charge-sheet has also been filed and the present private respondent is an accused. In this background, 90% provisional pension and 90% provisional gratuity has been authorized in favour of the private



respondent.

The decision of the appellants to authorize 90% pension and gratuity is in order. The order of learned Single Judge to release 100% pension and gratuity is erroneous in law keeping in mind the decision rendered in the case of **Vijay Kumar Mishra vs. The State of Bihar and Others** reported in **2017(1) PLJR 575**.

This appeal is allowed. The impugned order dated 11.05.2016 passed by learned Single Judge is set aside.

Before parting, learned counsel for the private respondent submits that the leave encashment has also not been released and paid, if it is so, then the appellants are directed to ensure that the leave encashment is authorized and paid to the private respondent preferably within a period of three months from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2017
Transmission Date	NA

