

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9281 of 2014

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Indradeo Prasad Singh son of Late Bhup Narayan Singh resident of Ward No.7,
New Sipahi Tola, P.S. K. Haat, District - Purnea

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Bihar, Patna
2. Engineer-in-Chief-Cum-Special Secretary, Water Resources Department, Bihar, Patna
3. Executive Engineer, Flood Control Division, Naugachhia, Bhagalpur
4. Sub Divisional Officer, Flood Control Division, Naugachhia, Bhagalpur
5. The Accountant General, (Accounts & Entitlement), Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Anuj Kumar, A.C. to GP-24

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-06-2017

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Anuj Kumar, learned A.C. to G.P.24 for the State.

2. The present writ application has been filed by the petitioner, inter alia, with a prayer to direct the respondent authorities under Water Resources Department of the State Government to take steps towards making payment of entire retirement benefits in favour of the petitioner and arrears of pension and other dues along with penal interest that have not been paid to him without there being any just and valid reason in support thereof.

3. It is submitted by the learned counsel for the petitioner



that after filing of the writ application the respondent authorities took steps towards fixation of pension as also making payment of other retirement benefits and following the same the petitioner was paid admissible dues in terms of Leave Encashment, GPF, Group Insurance etc. by the concerned authorities and payment of pension to the petitioner has also commenced from the month of April, 2015. He submitted that the petitioner has also received arrears of pension. However, the respondents have illegally withheld an amount of Rs.09,04,104/- from the pension and gratuity payable to the petitioner on the pretext that while in service the petitioner had not handed over the charge of porcupines. He submitted that the aforesaid allegation made by the respondents is wholly illegal as the respondent no.4 withheld the aforementioned amount without holding any proceeding against the petitioner. He submitted that neither any proceeding was initiated against the petitioner while he was in service nor any proceeding was initiated against him under the Bihar Pension Rules, 1950 after his superannuation. Hence, the impugned action of withholdment of retiral benefits is arbitrary, unjust, illegal and malafide as also in complete violation to the right to property, as enshrined under Article 300-A of the Constitution of India.

4. On the other hand, learned counsel for the State referring to the counter affidavit filed on behalf of the respondents submitted



that the entire retiral dues of the petitioner except Rs.09,04,104/- has already been paid. The amount of Rs.09,04,104/- has not been paid to the petitioner as the Executive Engineer, Flood Control Division, Naugachia requested the Treasury Officer, Purnea for deducting the said amount from the payable retiral dues of the petitioner because he has failed to hand over charge of porcupines. He submitted that since it is not a case of withholdment of pension rather it was a case of adjustment of pecuniary loss caused to the State, no proceeding was required to be initiated.

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

6. The petitioner retired from the post of Junior Engineer at Flood Control Division, Naugachia on 31.07.2013. It is not disputed by the learned counsel for the State that no proceeding had been initiated against him when he was in service. Even after his retirement the respondents have not proceeded against him under the provisions of the Bihar Pension Rules for withholdment or recovery of pension. It is also evident from the pleadings of the parties that the allegation of not handing over the complete charge made by the respondents against the petitioner is not admitted by the petitioner. It is well settled in law that an amount which is disputed in nature cannot be recovered from the retiral benefits of an employee without



resorting to due process of law.

7. The general provisions for grant of pension are incorporated in Chapter III Part-1 of the Pension Rules. The payment of pension to a Government servant against whom a departmental or judicial proceeding or enquiry has been taken is dealt with in Rule 43(b) and (c) of the Pension Rules.

8. Rule 43(b) of the Pension Rules empowers the State Government to withhold or withdraw a pension or any part of it and to recover from a pension of the whole or part of any pecuniary loss caused to the Government by misconduct or negligence. However, the Government can exercise such power only in case if the pensioner is found guilty of grave misconduct in departmental or judicial proceeding.

9. The proviso to Rule 43(b) of the Pension Rules stipulates that such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during employment shall not be instituted save with the permission of the State Government and such sanction shall not be accorded in respect of any event which took place more than four years before institution of such proceeding. It further stipulates that the proceeding shall be conducted in accordance with the procedure applicable to the proceeding on such an order of dismissal from service may be made.



10. Rule 43(c) of the Pension Rules confer powers upon the State Government to pay provisional pension to the Government servant whether departmental or judicial proceeding in which 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.

11. Having noticed the statutory Pension Rules governing the case of the retired Government servant when I look to the facts of the present case, I find that the petitioner has never ever been held guilty in any proceeding duly instituted by the State of causing any loss to the Government by misconduct or negligence. So far, no proceeding has been initiated against him. The allegation of not handing over charge of any article is also not accepted by him. In that view of the matter, a disputed amount cannot be made a ground for withholdment of pension.

12. Thus, the action of the respondents in withholding the amount of Rs.09,04,104/- from the retirement benefits of the petitioner cannot be justified. Accordingly, the respondent nos.2 and 3 are directed to release the aforementioned amount of Rs.09,04,104/- in favour of the petitioner within two months from the date of receipt/production of a copy of this order.

13. However, this order will not preclude the respondents



from proceeding against the petitioner in accordance with law.

14. With the aforestated observations and direction, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03-07-2017
Transmission Date	

