IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23921 of 2013

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Shaikh Abdul Mannan son of Late Maneer Ahmad, resident of village-Athkhambha, P.S- Barhariya, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Director, Primary Education, Govt. of Bihar, Patna.
2. The District Progrmme Officer, (Establishment), District- Siwan.
3. The Block Education Officer, Hussainganj, Disrict- Siwan.
4. The Treasury Officer, Barhariya, District-Siwan.
5. The Accountant General of Bihar, Beerchand Patel Path, Patna.
6. The Headmaster I/C Boys Middle School, Hussainganj, District- Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Praksh Chandra Jha, Advocate
	:	Mr. Rajesh Chaudhary, Advocate
For the Respondent No.1	:	Mr. Parijat Saurav, Advocate
For the Accountant General	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-02-2017

The instant writ application has been filed by the petitioner to direct the respondents to pay him pension and 10% of the remaining amount of gratuity.

2. The petitioner retired on 31st January, 2013 from the post of Assistant teacher from Boys Middle School, Hussainganj, Siwan.

3. It is submitted by the learned counsel for the petitioner that while the petitioner was in service no disciplinary proceeding was initiated against him. After retirement, an FIR was instituted against the petitioner and a proceeding under Rule 43(b) of the Bihar Pension

Rules (for short 'the Pension Rules') has also been initiated against him. It is submitted that though the petitioner submitted duly filled up pension papers in prescribed form in April, 2013 for payment of his post retiral benefits including pension, the official respondents have not paid 10 per cent gratuity and 100 per cent pension to the petitioner.

4. It is submitted by the learned counsel that withholdment of 100 per cent pension or gratuity on account of a pending criminal case and a proceeding under Rule 43(b) of the Pension Rules is wholly illegal and unjustified.

5. In reply, learned counsel for the State submitted that it is true that the petitioner retired on attaining the age of superannuation on 31st January, 2013, but just before his retirement on 28th January, 2013 and 30th January, 2013, the petitioner withdrew Rs.3,44,000/- and Rs.1,84,400/- respectively from the Treasury for which he has not submitted utilization certificate till date. He submitted that for the alleged misconduct on the part of the petitioner a proceeding has been initiated against him under Rule 43(b) of the Pension Rules and charges have already been framed against him. He submitted that the inquiry proceeding is going on and is likely to conclude soon. He submitted that the respondents are fully justified in withholding 100% pension and 10% of the gratuity of the petitioner. He also submitted that though the petitioner retired long back, he has not handed over complete charge till date.

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

7. At this stage, I deem it proper to reproduce Rules 43(b) of the Pension Rules, which reads as under:

> *"**Rule 43(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 be 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."

8. From a reading of the aforesaid Pension Rules it would be evident that the State Government has a right to proceed against an employee even after retirement subject to certain conditions, as prescribed under Rule 43(b)(a)(i) and (ii). The State Government has also the right of withholding or withdrawing a pension or any part of it either permanently or for a specified period. It has also the right of recovery from a pension of an employee of the whole or part of any pecuniary loss caused to the 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 the Government by misconduct or negligence during his service.

9. However, it would be evident that the Pension Rules do not permit the State to withhold full pension or gratuity of an employee during pendency of the disciplinary or judicial proceeding rather it empowers the State to withhold or withdraw a pension or any part of it in the event of proven misconduct either in a judicial proceeding or in a disciplinary proceeding.

10. In the present matter, it is not the case of the State that the petitioner has been held guilty either of a criminal charge by a court of competent jurisdiction or in a disciplinary proceeding rather the case of the respondent State is that an FIR has been instituted against the petitioner and he is also being proceeded against in an inquiry under Section 43(b) of the Pension Rules.

11. It would be of salience to note here that by notification dated 19th July, 2012, the State Government has added clause (c) in Rule 43 of the Pension Rules, which reads as under:

> **"43*(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 per cent)."*

12. It would, thus, be evident that in case the departmental proceeding or judicial proceeding against a retired employee is not concluded, the amount of provisional pension shall be less than the maximum admissible amount of pension, but shall in no case less than 90 per cent.

13. In that view of the matter, the action of the State Government in withholding full pension of the petitioner on the ground of pendency of a criminal case and a departmental proceeding against him, is wholly unjustified. In absence of any provision in the Pension Rules, the State Government cannot withhold 100% pension during the pendency of the departmental/criminal proceeding. Since the State Government has already paid 90% of the gratuity amount to the petitioner, for the present no relief can be granted to the petitioner in that regard.

14. For the reasons assigned hereinabove, I direct the respondent State to forthwith sanction and pay 90 per cent of the pension to the petitioner during the pendency of the proceedings. The respondents are also directed to pay 90 per cent of arrears of pension to the petitioner. The entire exercise in this regard shall be made by the State respondents within a period of two months from the date of receipt/production of a copy of this order. However, on conclusion of departmental or judicial proceeding, the respondents would be at liberty to take decision in terms of the provisions prescribed under Rule 43(b) of the Pension Rules.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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