

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6048 of 2017

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Lakshmi Kant Patel, Son of Sri Anand Prasad, resident of Mohalla- Saketpuri,
Bazar Samiti, Rajendra Nagar, P.S.- Bahadurpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bisheshwariya Bhawan, Patna.
2. The Special Secretary, Road Construction Department, Bisheshwariya Bhawan, Patna.
3. The Deputy Secretary, Management Cell, Road Construction Department, Bisheshwariya Bhawan, Patna.
4. The Accountant General, Bihar, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha and Mr. Sushil Kumar Jha, Advocates
For the State	:	Mr. Shailendra Kumar, A.C. to P.A.A.G. 2
For the Accountant General	:	Mr. Chaitanya Swaroop, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-02-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following
reliefs:

*“That this writ application is being
filed for issuance of a writ in the nature of
mandamus or any other appropriate writ/writs,
direction/directions commanding the respondents
to release the full amount of gratuity and leave
encashment payable to the petitioner who
superannuated from his regular service with effect
from 31.12.2015, while holding the substantive post*



of Executive Engineer in the Department.”

3. In the earlier order dated 18.01.2018, the Court had held that till the pendency of departmental and judicial proceeding, no Gratuity is payable and provisional pension is only payable. Moreover, in the departmental proceeding, withholding of 10% of pension order has been passed.

4. In view of the aforesaid, the Court cannot pass any order with regard to payment of either full pension or Gratuity for the reasons recorded in the order dated 18.01.2018.

5. However, with regard to Leave Encashment, learned counsel for the State has relied upon the circular of the State Government to this effect bearing No. 4564 dated 06.07.1993 of the Finance Department. This Court had occasion to deal with the said circular in C.W.J.C. No. 11926 of 2016 in the case of **Ashok Kumar Jha vs. The State of Bihar and Ors.** and by order dated 02.01.2018 had held that the circular can neither override or add to the existing statutory provision of the Bihar Pension Rules, 1950 and accordingly, payment/encashment of unutilized leave was directed to be made.

6. Learned counsel for the State has not been able to show any ground for the Court to take a different view in the matter.

7. Accordingly, adopting the reasons recorded in the



order dated 02.01.2018 in the case of **Ashok Kumar Jha** (supra), the writ petition stands disposed off holding the petitioner entitled to payment/encashment of his unutilized earned leave. The same be paid to him within four weeks from the date of production of a copy of this order before the respondent no. 1.

(Ahsanuddin Amanullah, J.)

P. Kumar

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