

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15222 of 2014

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Kapil Ram Son of Late Ram Charita Ram Resident of Village - Mahuat, P.S. -
Wazirganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary General Department of Administration, Govt. Bihar, Patna.
2. The Chief Secretary General Department of Administration, Govt. of Bihar, Patna.
3. The Principal Secretary Department of Revenue Land Reformers, Govt. Bihar, Patna.
4. The District Collector-cum-District Magistrate, Gaya, District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh
For the Respondent/s : Mr. R.R. K Pandey

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 04-04-2018

This writ petitioner under Article 226 of the Constitution of India has been filed for quashing the order dated 26.04.2014 passed by District Collector, Gaya (respondent No. 4) under Rule 139 (C) of the Bihar Pension Rules forfeiting the entire pension and gratuity of petitioner.

2. The case of petitioner is that he was appointed as Revenue Clerk on 16.11.1994 and was posted at Hisua Block under the District of Nawada and after working on several places, he superannuated from the service on 31.01.2013. While Petitioner was posted in Tankuppa Block in the District of Gaya a complaint was made by one Radhe Shyam Sao to the Officer-in-charge of Vigilance police, Patna of demanding Rs. 2,500/- as



bribe for mutating his ancestral land and creating jamabandi.

3. On complaint of said Radhe Shyam Sao, the Officer-in-charge of Vigilance police station, Patna made verification of the matter at his own level and found the complaint to be true and a raiding team was constituted and petitioner was caught red handed accepting bribe from the complainant and, accordingly, Vigilance Case No. 6/2012 dated 13.01.2012 was instituted under Section 7/13(2) Sub Section 13/1(d) of P.C.Act, 1988 and was sent to jail and was also suspended vide order dated 15.03.2012 by the District Magistrate, Gaya.

4. Petitioner was released on bail and joined on 26.04.2012 and his suspension order was revoked and he was transferred to Mohanpur Block to Tankuppa Block from where he superannuated on 31.01.2013.

5. No departmental proceeding was initiated against him on the basis of Vigilance Case as referred above.

6. After superannuation, a show cause notice was issued to him under Rule 139 (C) of Bihar Pension Rules on 17.02.2014 to submit his reply within 15 days.

7. The petitioner in compliance of said letter dated 17.02.2014 gave his reply to the Collector, Gaya (respondent



No. 4) on 03.03.2014 denying all the allegations leveled against him.

8. The Collector, Gaya after going through the records as well as considering the show cause of the petitioner passed an order on 26.04.2014 forfeiting the entire pension and gratuity by way of punishment under Rule 139(C) of Pension Rules.

9. No proceeding was initiated against the petitioner either under Bihar Government (CCA Rules) 2005 during his service period or under Rule 43(B) of Bihar Pension Rules after his superannuation.

10. The order of the District Magistrate, Gaya-cum Disciplinary Authority is based on initiation of criminal proceeding against the petitioner and being caught red handed while accepting bribe and thereafter remained in jail, as such he is not entitled for any pension.

11. It has been submitted on behalf of petitioner that as no departmental proceeding was initiated against petitioner for any misconduct and only because of pendency of Vigilance case there cannot be any order passed under Bihar Pension rules, as such, the order passed by District Magistrate is without jurisdiction and contrary to law.

12. After going through the materials available on



record and perusing the order passed by the Disciplinary Authority, this Court finds that the order passed by the District Magistrate, Gaya, Disciplinary Authority under rule 139 (C) of Bihar Pension Rules is without jurisdiction and unless and until misconduct is established in a departmental proceeding or the employee is convicted by a criminal court, any order of forfeiture of pension or gratuity cannot be made. The Vigilance Case against petitioner is still pending and only on his being convicted by Vigilance Court order of forfeiture of pension and gratuity can be passed by the Disciplinary Authority. Accordingly, the order passed by the District Magistrate is set aside and respondents are directed to pay 90% of provisional pension and 90% of gratuity and other retirement benefits to the petitioner as the final pension and final gratuity cannot be paid during pendency of the criminal case and payment of final pension and final gratuity or forfeiture of pension/gratuity is dependent upon the outcome of Vigilance Case.

13. As a result, the writ petition is allowed. The District Magistrate, Gaya (respondent No. 3) Disciplinary Authority is directed to release 90% provisional pension and 90% provisional gratuity and all other retiral dues to the petitioner within three months from the date of receipt/production of a



copy of this order.

14. The writ petition is allowed, however, without any costs.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.05.2018
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