IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4889 of 2013

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Kedar Paswan Son of Late Raman Paswan, Resident of A.G. Colony, Main Road (Near S.S. Complex), P.O.- Ashiana Nagar, P.S.- Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Accountant General, Birchand Patel Path, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. N. Pathak, Advocate
For the State	:	Mr. Binod Kumar, Advocate
For the Accountant General	:	Mr. Uday Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 08-03-2018

Heard learned counsel for the petitioner and the State.

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

> *"That by this application, the petitioner is invoking the writ jurisdiction of this Hon'ble Court in the nature of appropriate writs/writ for commanding the respondent to grant full pension and gratuity forthwith, which has been withheld on the pretext of pendency of criminal case since long, which is wholly contemptuous to the order passed in C.W.J.C. No. 17299/2008 (Kedar Paswan Vs. The State of Bihar & others) by this Hon'ble Court, which has been affirmed upto the Hon'ble Supreme Court as it evident from Annexure-2 to 4 to the writ petition."*

3. The petitioner superannuated on 29.02.2008 from the post of Superintending Engineer under the Road Construction Department, Government of Bihar. Seven months after that, departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') was initiated. The said was assailed by the petitioner in C.W.J.C. No. 17299 of 2008, on the ground that law does not permit such initiation after retirement for an incident of a period over four years prior to the initiation of the proceeding. The writ petition was allowed by order dated 23.07.2010 and the departmental proceeding against him was quashed. The same was affirmed in L.P.A. No. 314 of 2011 and the S.L.P. filed by the State was also dismissed. Pursuant to the same, the petitioner was paid 90% of pension and gratuity and 10% was withheld.

4. Learned counsel for the petitioner submitted that such withholding is impermissible in view of the decision of a Full Bench of the Jharkhand High Court in the case of **Dr. Dudh Natha Pandey V. State of Jharkhand (Jhr) (FB)** reported as **2007(4) Jharkhand Cases Reporter 1 (Jhr) (FB)**.

5. Learned counsel for the State submitted that in view of the Division Bench having set aside the departmental proceeding, the petitioner has been paid his due entitlement and as the Rules having stood amended, the authorities are within their jurisdiction to

withhold part of pension and gratuity which has been done in the present case.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The law on the point has been finally settled by a Division Bench of this Court in the case of **Vijay Kumar Mishra vs. State of Bihar** reported as **2017(1) PLJR 575**, in which it has been held that the notification dated 31st July, 1980 as substituted the Bihar Pension Rules, Treasury Code, Service Code and other instructions issued from time to time and, thus, is a substantive rule which permits withholding of gratuity and other benefits, if there are departmental or judicial proceedings pending against an officer even after his retirement. The relevant portion is quoted hereinbelow:

> *"11. A perusal of the Notification dated 31st July, 1980 shows that it is not a circular or executive instruction which is contrary Rule 43(b) of the Bihar Pension Rules. Such notification in fact substitutes the Bihar Pension Rules, Treasury Code, Service Code and other instructions issued from time to time. Thereafter, it is not an executive instruction but the substantive rules which permit withholding of gratuity and other benefits, if there are departmental or judicial proceedings pending against an officer even after his retirement. Still further, the attention of the Supreme Court was not drawn to Rule 27 of the Bihar Pension Rules. As per Rule 27, pension includes gratuity. Therefore, when Rule 43(b) talks about right to withhold pension, it will include the right to withhold gratuity as well. Therefore, even in*

> *terms of Rule 43(b), the pension which includes gratuity could be withheld but the issue stands clarified when amending notification was published."*

7. The aforesaid decision of the Court has been passed after noticing the order of the Hon'ble Supreme Court in the case of **State of Jharkhand vs. Jitendra Kumar Srivastava** reported as **(2013) 2 SCC 210**.

8. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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