

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18403 of 2016

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Anil Kumar Son of Late Nand Kumar Prasad, resident of Chaturbhuj Apartment,
Munnachak, P.S. - Patrakar Nagar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Minor Water Resources Department, Bihar, Patna.
2. Principal Secretary, Minor Water Resources Department, Bihar, Patna.
3. Principal Secretary, Water Resources Department, Bihar, Patna.
4. Additional Secretary, Minor Water Resources Department, Bihar, Patna.
5. Joint Secretary, Minor Water Resources Department, Bihar, Patna.
6. Officer of Special Duty, Minor Water Resources Department, Bihar, Patna.
7. Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. P. N. Sahi, A.A.G. 6
For the Accountant General	:	Ms. Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-07-2018

Heard Mr. Purushottam Kumar Jha, learned counsel for
the petitioner and Mr. Pushkar Narayan Shahi, learned AAG-6 for the
State.

2. Pursuant to order dated 19.06.2018, the Principal
Secretary, Department of Minor Water Resources is present and has
also filed his show cause. The Additional Secretary of the
Department is also present.



3. The reason why the Court had required the presence of the Principal Secretary has been recorded in detail in the orders dated 14.05.2018 and 19.06.2018.

4. Learned counsel for the State submitted that there has been slackness in the monitoring of cases by the Department but the same has been at lower levels and also after specific instructions in this regard had been issued in a High Level Departmental Meeting headed by the Minister of the Department in which responsibility was fixed on various officers for such monitoring, in the month of April, 2018 itself. In view of the situation, the Department has issued show cause notice to the concerned officers on 29.06.2018, asking for submission of show cause within one week and thereafter the exercise shall be taken to its logical conclusion.

5. Learned counsel for the State assured the Court that the issue has been taken up seriously by the Department and necessary action shall be taken. The Principal Secretary has also tendered apology and has assured that he shall be monitoring the cases henceforth.

6. Coming to the merits of the matter, as of now, only 10% pension remains to be paid to the petitioner, as during the pendency of the writ petition, 90% provisional pension, 100% gratuity and entire leave encashment amount has been paid to him.



Learned counsel submitted that despite the recent decision of the Full Bench of the Court in C.W.J.C. No. 15328 of 2016 dated 02.05.2018 in the case of **Arvind Kumar Singh vs. The State of Bihar and Ors.**, where only 90% provisional pension, 90% gratuity and no leave encashment was required to be paid by the Department, the petitioner being paid 100% gratuity and entire leave encashment shows the *bona fide* of the Department.

7. Learned counsel for the petitioner submitted that the ground for such withholding of remaining 10% of pension is the lodging of a criminal case on 25th May, 2018, against the petitioner, which clearly is a late reaction and also shows the biasness of the Department, as only pursuant to strict order passed by the Court, such FIR has been lodged and the only allegation is regarding irregularity in the purchase of certain items, which, from the records would disclose that the purchase had been at the level of the headquarters i.e., the Department itself in which the petitioner was not even remotely connected.

8. On a quick response sought from learned counsel for the State with regard to whether the records disclose the stand taken on behalf of the petitioner, learned AAG-6, upon instructions from the officer present, especially Kumar Arun Prakash, respondent no. 4, submitted that the records would establish that to the said purchase,



the petitioner was also a party and, thus, he cannot be absolved of his responsibility.

9. Be that as it may, since the said cause of action is neither under challenge before this Court nor the Court has had any opportunity to go into the merits, it shall be open to the petitioner to move in an appropriate proceeding against such lodging of the FIR.

10. At this stage, learned counsel for the petitioner submitted that at least some interest may be awarded on delayed payment of gratuity. It was further submitted that an application for commutation of pension has also remained unconsidered. In this regard also the Court would only observe that commutation can be considered only when full pension has been fixed because commutation is dependent upon the final amount of pension fixed. Thus, even such prayer can be made by the petitioner in the challenge to the lodging of the FIR and withholding of 10% on account of such proceeding. The Court would only observe in this regard that only when a departmental action is held to be bad or beyond jurisdiction or perverse and bias, then only the question would come as to how the petitioner is required to be compensated for the delay in payment of his retiral admitted dues. Thus, the Court gives liberty to the petitioner to claim interest on the delayed payment along with his challenge to the lodging of the FIR against him.



11. The writ petition stands disposed off in the
aforementioned terms.

12. The personal appearance of the officers stands
dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
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