

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2143 of 2016

In

Civil Writ Jurisdiction Case No.7093 of 2014

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Shashi Bhushan Singh aged about 70 years, Son of Late Narayan Prasad, resident of Professor Colony, Dhaneshwar Ghat, Biharsharif, Police Station Biharsharif, District Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
3. The Under Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
4. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Police Station Kotwali, District Patna.
- 5.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rupak Kumar, Adv.
For the Respondent/s : Mr. Raj Ballabh Prasad Yadav, Aag11
For A.G Bihar : Mr. Satyendra Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 25-09-2018

This intra Court Appeal arises from a judgment and order passed by learned Single Judge in C.W.J.C. No. 7093 of 2014 which was heard analogous with C.W.J.C. No. 5380 of 2014 and whereby the learned Single Judge while allowing leave



encashment to the two petitioners, has upheld the withholding of 90% pension and the entire gratuity of the two petitioners.

Mr. Rupak Kumar has appeared for the appellant writ petitioner to submit that the respondents have released 90 % of the pension in appreciation of their own circular but the gratuity in its entirety as well as the leave encashment was withheld and even after the order of the learned Single Judge the respondents have not taken steps for payment of leave encashment for which the appellant writ petitioner has preferred a contempt application. He submits that the present appeal is restricted to the order of the learned Single Judge in so far as it upholds the withholding of the gratuity in its entirety.

Learned counsel has referred to a Full Bench judgment of this Court rendered in the case of **Arbind Kumar Singh versus State of Bihar** since reported in **2018 (3) PLJR 933** to submit that a special bench was constituted in view of difference of opinion between the two Division Bench as regarding the admissibility of gratuity during the pendency of a judicial or departmental proceeding and when this appeal was heard analogous with the appeal filed by **Arbind Kumar Singh** (supra). It is submitted that by judgment and order passed on 02.05.2018 the Full Bench has upheld the claim of a delinquent facing judicial/departmental



proceeding to an amount of 90% gratuity on similar lines as allowed by the State in respect of pension relying upon their circular which allows 90% pension during pendency of judicial/ departmental proceeding. He further informs that despite such long passage of time, neither the departmental proceeding initiated against the petitioner has been concluded nor the judicial proceeding has reached any conclusion. According to learned counsel in view of the Full Bench judgment of this Court, the petitioner is entitled to at least 90 % gratuity in addition to the relief on leave encashment already granted to him by the learned Single Judge and the 90% pension allowed by the department itself. He further submits that even though the Full Bench has upheld the right of the State to withhold leave encashment but in absence of any challenge by the State to such relief granted by the learned Single Judge in regard to payment of leave encashment, they are bound by the judgment which has attained a finality.

Mr. R.B.P Yadav, AAG 11 appears for the State to submit that the matter can be disposed of in the light of the legal position settled by the Full bench in the case of **Arbind Kumar Singh** (supra).

We have heard learned counsel for the parties and we have perused the records.



The present appeal is restricted to the issue of non payment of gratuity amount to the appellant-petitioner on account of the pending departmental /judicial proceeding, which decision of the respondents has been upheld by the learned Single Judge. In so far as payment of 90% pension is concerned, Mr. Rupak Kumar, learned counsel admits that it is being paid by the department and in so far as payment of leave encashment is concerned, it is informed that the direction is already present in the order of the learned Single Judge which has not been appealed against.

We shall thus restrict our consideration to the grievance raised in this appeal i.e. non payment of gratuity amount and since the law on the issue is settled in paragraph 25 of the Full Bench judgment whereby a delinquent facing a departmental/judicial proceeding is allowed a payment of gratuity, to the extent of not less than 90% thereof, we hold that the appellant petitioner would be entitled to 90 % of gratuity admissible to him.

We accordingly, direct the State to take steps for payment of 90% gratuity to the appellant-petitioner in tune with the Full Bench judgment and which exercise be concluded within a period of 3 months from the date of receipt /production of a copy



of this judgment. The judgment and order of the learned Single Judge stands modified to the extent above.

The appeal is allowed with the modifications/directions above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Bibhash/Ranveer

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

