

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8677 of 2017

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Akhilesh Kumar Sharma, Son of Late Kedar Nath Sharma, Resident of Village-Gorhna, P.O. Neora, P.S. Bihta, District-Patna Presently residing at Flat No. 405, Surya Laxmi Vila Apartment, Ram Jaipal Path, Bailey Road, P.O. Danapur, P.S. Rupaspur, District-Patna, the retired Executive Engineer, Building Construction Department, Government of Bihar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional-Commissioner-cum-Special Secretary, Building Construction, Department, Government of Bihar, Patna.
4. The Additional Secretary, Building Construction Department, Government of Bihar, Patna.
5. The Director, Provident Fund, Bailey Road, Patna.
6. The Accountant General Bihar, Patna.
7. The Treasury Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Manglam, Advocate
For the State	:	Mr. Manoj Kumar Ambastha, S.C. 26
		Mr. Subodh Kumar, A.C. to S.C. 26
For the Accountant General	:	Mr. Prabhat Ranjan-I, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 23-04-2018

Heard learned counsel for the petitioner; State and
Accountant General.

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

*“(I) For issuance of an appropriate writ
in the nature of For issuance of an appropriate
writ in the nature of MANDAMUS, commanding
and directing the Respondent Authorities for
release of following retirement benefits of the
petitioner;
(a) Pension;*



- (b) Gratuity;*
- (c) Leave Encashment; and*
- (d) General Provident Fund (G.P.F.)*

(II) For issuance of an appropriate writ in the nature of For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for payment of the aforesaid amount with up-to-date interest on the ground that it was because of an order of dismissal passed by the petitioner which ultimately could not be sustained before this Hon'ble Court, the aforesaid payment of the petitioner has been inordinately delayed for which he is entitled on the date of his superannuation on 31.03.2016.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

3. From the pleadings, as of now, as the authorities have taken a decision to continue with the departmental proceeding, on 15.05.2017, and second show cause has also been issued to the petitioner, the stand of the authorities that in terms of the order of a Division Bench of this Court in the case of **Vijay Kumar Mishra vs. State of Bihar** reported as **2017(1) PLJR 575**, sanction has been granted for payment of only 90% provisional pension, leave encashment and G.P.F. whereas 10% pension and entire gratuity has been withheld for the time being.

4. Learned counsel for the petitioner submitted that earlier when he was dismissed from service, the challenge to the same before this Court, in C.W.J.C. No. 2015 of 2015, succeed and



though, after setting aside such order, the Court had granted liberty to the authorities to take a decision with regard to whether the petitioner would be proceeded against in accordance with law and to conclude the proceeding within six months. Learned counsel submitted that on 28.02.2017, the order was communicated to the authorities and though they have taken a decision to continue with the departmental proceeding on 15.05.2017, even taking six months from the date, necessarily required the authorities to conclude the same by passing final order latest by 15.11.2017 and not doing the same till date, they are now precluded from continuing with such proceeding.

5. Learned counsel for the State submitted that the Court had granted discretion to the authorities to continue with the proceeding which they have done in time and further that the Court had in specific terms observed that conclusion be made of the proceeding within six months, but for the reasons not attributable to the petitioner, and in the present case, there is enough material to show that the delay is directly attributable to the petitioner. Further, he added that even otherwise, in view of there being another substantive Vigilance case pending against him, automatically in terms of the provisions of the Bihar Pension Code as interpreted by the Court in the case of **Vijay Kumar Mishra** (supra), the action of



the authorities is in accordance with law.

6. Learned counsel for the Accountant General submitted that by Friday i.e., 27th April, 2018, necessary authority shall be issued both with regard to provisional pension and leave encashment.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court would not go to into the area as to whether in terms of the liberty given to the authorities to proceed in the departmental proceeding or even otherwise with regard to a Vigilance case pending, such withholding of 10% pension and gratuity is justified as the issue is not involved in the present case and the parties shall be at liberty to raise it before the appropriate forum, in accordance with law, where it shall be considered. The Court would only observe that it has not expressed any opinion on such issue.

8. However, in view of what has been recorded hereinabove, the writ petition stands disposed off with a direction to the Accountant General to ensure that the authority is issued with regard to the provisional pension and leave encashment in terms of the sanction accorded by the Competent Authority, copies of which have been brought on record in the counter affidavit filed on behalf of respondent no. 2, latest by 27.04.2018. Thereafter, the Treasury



Officer, Patna shall ensure that actual payment is also made in favour of the petitioner. The same be done within two weeks from the date of production of a copy of this order before him and the petitioner completing all the required legal formalities. For the purpose of convenience, let the Treasury Officer, Patna be added as respondent no. 7. Necessary correction be made in the cause tile of the writ petition by learned counsel for the petitioner during the course of the day.

9. Learned counsel for the State has accepted notice on his behalf.

10. In view of the Court being informed that the issue which has been decided in the case of **Vijay Kumar Mishra** (supra) has travelled to the larger Bench in which after hearing, orders are reserved, such issue, especially on the point of gratuity, in the case of the petitioner also would be governed by the order passed by the larger Bench.

(Ahsanuddin Amanullah, J.)

P. Kumar

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