IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.338 of 2018
In
Civil Writ Jurisdiction Case No.6048 of 2017

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Lakshmi Kant Patel, Son of Sri Anand Prasad, Resident of Mohalla Saketpuri, Bazar Samiti, Rajendra Nagar, P.S.- Bahadurpur, District- Patna.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bisheshwariya Bhawan, Patna.
2. The Special Secretary, Road Construction Department, Bisheshwariya Bhawan, Patna.
3. The Deputy Secretary, Management Cell, Road Construction Department, Bisheshwariya Bhawan, Patna.
4. The Accountant General Bihar, Birchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Gajendra Kumar Jha, Advocate Mr. Sushil Kumar Jha, Advocate
For the Respondent/s	:	Mr. Raj Ballav Prasad Yadav, AAG-XI

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 17-12-2018

The present appeal has been preferred against the order dated 07.02.2018 and 18.01.2018 passed in CWJC No.6048 of 2017, whereby the learned single Judge has declined to pass an order for payment of full gratuity with interest to the appellant only on the ground of pendency of a criminal case involving disproportionate assets, though in the departmental proceeding the allegation against the petitioner has not been substantially proved and an order to deduct 10% of pension amount payable to the petitioner has already been passed.

2. The appellant had moved this Court in CWJC No.6048 of 2017 seeking release of full amount of gratuity payable to the petitioner and also to direct the release of the full amount due to him by way of unutilized leave which was payable to the petitioner. The writ petitioner had further prayed for payment of interest over such dues, which became payable to him after his superannuation in the month of January, 2016.

3. The brief facts, which led to the filing of the writ application, is that the petitioner-appellant was made an accused in Economic Offence Unit P.S. Case No.18 of 2014 dated 19.03.2014 in respect of an offence alleging acquiring of assets disproportionate to his income. Accordingly, a departmental proceeding was also initiated against the petitioner wherein a final order has been passed on 29.11.2016 (Annexure 4 to the writ application), by which it has been ordered that 10% of the pension amount shall permanently be deducted from the petitioner, apart from the order not to pay anything except subsistence allowance during the period of suspension.

4. It was submitted that even after lapse of three and a half years of lodging of the criminal case, neither there was any

sanction accorded by the department nor was any chargesheet submitted by the prosecution, i.e. Economic Offence Unit. It was submitted that the petitioner superannuated from regular service in December, 2015 whereas the case against the petitioner was lodged on 19.03.2014 and since chargesheet has not been submitted, it was inappropriate for the department to withhold the gratuity and also the leave encashment.

5. Learned counsel for the appellant submits that since the learned single Judge has already passed orders in favour of payment of leave encashment to the petitioner, the said part is not under challenge, but the withholding of gratuity as payable to the petitioner after the date of his superannuation is his sole grievance, which is to be considered by the Court. It is submitted that the learned single Judge has erroneously held that the payment of gratuity is not permissible considering the fact that the departmental proceeding as well as the judicial proceeding is pending.

6. Learned counsel for the appellant submits that the petitioner had already been subjected to an order of deduction of 10% of the pension amount, even though in the departmental proceeding, the charges have not been substantially proved and, thus, there was no substantial allegation against the appellant-

petitioner. It was urged that even the conducting officer had reported that there was no question of any disproportionate income, but the allegation was regarding purchase of a Mahindra SUV vehicle on loan without disclosing it in the list of assets.

7. Learned counsel for the appellant further submitted that withholding of gratuity on petitioner’s superannuation was wholly illegal and unwarranted as gratuity is a legal right under law and interest is payable on the amount of gratuity if it is withheld after its due date of payment. Furthermore, it was urged that the gratuity is a constitutional right guaranteed under Article 300A of the Constitution of India. There is no statutory provision to withhold the amount of gratuity and such an action infringes the employee’s vested right guaranteed under Article 300A of the Constitution of India. Thus, the learned single Judge has erred in declining to grant relief to the petitioner.

8. We have heard learned counsel for the parties.

9. It appears that the prayer for payment of gratuity to the petitioner has been declined by the learned single Judge on the basis of the judgment in the case of ***Vijay Kumar Mishra vs. State of Bihar,*** reported in ***2017(1) PLJR 575***, wherein the Court has stated that during the pendency of the departmental proceedings,

gratuity is not payable. It also appears that the petitioner has already been given the punishment of withholding of 10% of pension in the departmental enquiry, which was concluded against the petitioner, vide departmental Enquiry Commissioner's Memo No.615 dated 10.12.2014. In the departmental enquiry, charges against the petitioner of disproportionate income was not established, barring the possession of a Mahindra SUV vehicle, which was omitted to be shown in the return filed by the petitioner. Thus, even though the charges were not fully established against the petitioner, he was given the punishment of withholding of 10% of pension under Rule 139 of the Bihar Pension Rules, vide notification contained in Memo No.9638(S) dated 29.11.2016 and against such punishment order, the petitioner has already represented. Moreover, the learned single Judge has failed to notice the subsequent Full Bench Judgment in the case of ***Arvind Kumar Singh Vs. State of Bihar*** *(Full Bench)***,** reported in ***2018(2) PLJR 933***, wherein it has been clearly held that in view of Rule 43(c) of the Bihar Pension Rules, which came into force on 19th of July, 2012, the earlier finding in the case of ***Vijay Kumar Mishra (supra)*** would not hold good so far, on the facts and circumstances of the present case. Thus, for this reason, we find that the learned single Judge has clearly erred in declining the prayer of the petitioner.

10. So far as payment of gratuity is concerned, no such order of punishment had been imposed and thus the withholding of gratuity by way of punishment to the petitioner does not seem to be having any rationale behind it. The decision in the case of Vijay Kumar Mishra (supra) would hold good only during the pendency of the departmental proceeding and in view of the fact that no chargesheet had been filed in the Economic Offence Unit P.S. Case No.18 of 2014, no judicial proceeding could be said to be pending for occasioning pecuniary loss to the Government. Thus, in the aforementioned background, we find and hold that the petitioner's gratuity cannot be withheld as he has already been awarded the punishment in the departmental proceeding.

11. Moreover, since there is no question of defalcation of any amount or expected recovery of any amount from the petitioner, in such circumstances, in the considered opinion of this Court, no amount against the gratuity payable to the petitioner can be withheld. Furthermore, the criminal proceeding without any chargesheet cannot raise any presumption at this stage that there was enough material against the petitioner for taking cognizance of the offence, as alleged. Moreover, there is no finding in the

departmental proceedings against the petitioner of having defalcated any amount from the State exchequer or having caused any pecuniary loss to the State.

12. Having considered the Rules in depth, particularly Rule 43(b) of the Bihar Pension Rules, we find that the crux of the Government circular is that whenever there is an expected recovery, those amounts can be withheld awaiting the outcome of the criminal proceedings or the departmental proceedings. In the instant case, there is no finding of guilt by the departmental enquiry officer against the petitioner, save and except that he had purchased a vehicle on getting loan, which he had failed to disclose in his assets for which the petitioner has suffered withholding of 10% of the pension amount and thus, in the above background, there appears to be no justification to withhold gratuity as well.

13. Under the circumstances, we find and hold that the order of the learned single Judge, so far as it relates to the withholding of the gratuity, cannot be upheld and is, accordingly, set aside to the said extent. Having held so as a natural corollary, we direct that the amount of gratuity payable to the petitioner be

released forthwith along with interest payable on the same from the date the said amount became payable to the date of payment.

14. The appeal is accordingly allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

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