

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1874 of 2019

1. The Union Of India and Ors Through The General manager N.F railway, Maligaon Assam
2. The Chief Personnel officer /IR N.F Railway Maligaon Assam Assam
3. The Divisional railway manager N.F Railway Katihar Bihar
4. The Additional Divisional Railway Manager N.F Railway Katihar Bihar
5. The Sr. Divisional Personnel Officer N.F Railway Katihar Bihar
6. The Divisional finance Manager N.F Railway Katihar Bihar

... .. Petitioner/s

Versus

Suresh Thakur S/o late Regubir Prasad R/O Mohalla Laliyahi PO Jute Mill, Katihar, PS Katihar District Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Ramadhar Shekhar
For the Respondent/s	:	Mr. Mukund Mohan Jha

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-09-2019

Heard the learned counsel for the parties.

The petitioners/Union of India as well as Railway Administration have challenged the order dated 21.08.2018 passed by the Central Administrative Tribunal, Patna Bench, Patna, directing them to pay to the respondent the retiral benefit in the nature of gratuity and commuted value of



pension which has been withheld for his having been implicated in a criminal case in the past.

Mr. Shivendra Kishore, learned senior counsel appearing for Union of India has primarily challenged the aforesaid order on the strength of Rule 10(1)(c) of Railway Services (Pension) Rules, 1993 (hereinafter referred to as "the Rules" for short) which is being extracted hereinbelow for the sake of completeness:

"(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iiia) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant."

It has been submitted on behalf of the petitioners that since the respondent was involved in a criminal case leading to a judicial proceeding against him, which has yet not



attained the finality, all other pensionary benefits have been made available to him except gratuity and the commuted value of pension.

As opposed to the aforesaid contention, the respondent has urged before this Court that the relevant provisions of the Rules would indicate that unless the misdemeanor / offence / judicial proceeding / departmental proceeding is relatable to his position in the Railway Administration or if it has caused losses to the Railway Administration, the rules would not apply. In support of the aforesaid reasoning, learned counsel for the respondent has drawn the attention of this Court the provisions contained in Rule 9(1), 9(3) as well as 10(1)(c) of the Rules.

He has further submitted that a rule has not to be read in isolation but in conjunction with other provisions. He has further expatiated upon the aforesaid argument by stating that the proviso in Rule 10 (1) (c) is applicable to departmental or judicial proceedings and it cannot be read only as against a departmental proceeding. If the rule making body had intended



otherwise, it would have been made very clear in the rule itself.

The records reveal that a departmental proceeding, though, was initiated but was not taken to its logical conclusion and was dropped.

In that view of the matter, the Railway Administration, it has been urged, ought to have taken a decision whether the involvement of the respondent in a criminal case was relatable to his job profile in the Railway Administration and whether it has caused any pecuniary losses to the railways.

The other limb of argument of the respondent is that the Pension Rules are statutory provisions but it would be subject to a bigger proposition of law that gratuity is a valuable right in the hands of an employee who has rendered his services in the department which cannot be withheld or forfeited casually.

Apart from this, the right to payment of gratuity is a property right and unless specifically provided for, the same cannot be taken away.



After having heard the learned counsel for the parties and after having perused the relevant provisions of the Railway Pension Rules, we are of the view that the payment of gratuity is dependent upon the decision of the employer and a gratuity which is payable to an employee could be withheld till the pendency of a departmental or judicial proceeding.

The issue which remains without doubt is that the respondent was made accused in a criminal case, though on a complaint by a private party, which has yet not attained finality.

This Court has been informed today by the learned counsel for the respondent that the aforesaid case has been fixed for judgement.

The other pensionary benefits to which the respondent is entitled has already been paid to him and what has not been paid to him is only the gratuity and commuted value of pension, which decision of withholding the same is only provisional, i.e., till the pendency of the judicial proceeding.



Considering this aspect of the matter, we do not approve of the order passed by the Tribunal on 21.08.2018 directing the Railway Administration to pay to the respondent the gratuity and commuted value of pension during the pendency of the judicial proceeding. The order impugned reflects that the relevant provision of the Pension Rules, namely, Railway Services (Pension) Rules, 1993 has not been seen in its entirety and the order has been passed on a presumption that payment of gratuity or withholding of the same would have to be in consonance with the payment of Gratuity Act, 1972 and for a pendency of criminal proceeding, the same could not be withheld. The observations of the Tribunal is also to the effect that the rules permit of setting off such payments, if not found to be in accordance with law later, from the pension. The Tribunal therefore was of the view that the payment of gratuity or commuted value of pension ought not to have been withheld on the sole basis of a judicial proceeding remaining pending at the time when it was withheld.



We find that rule 10 (1) (c) of the Railway Services (Pension) Rules, 1993 is very clear in its import and gratuity could be withheld till the conclusion of the judicial proceeding.

For the aforesaid reason we do not put our imprimatur to the order impugned in the present writ petition.

We set aside the order dated 21.08.2018 passed by the Tribunal with the caveat that it would be open for the respondent to approach the Railway Administration, after any positive decision is taken in the judicial proceeding which is pending against him.

The writ petition stands allowed to the extent indicated above.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

skm/Krishna

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.09.2019
Transmission Date	

