

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15228 of 2018

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Draweshwar Ram Son of Late Kangali Ram, resident of Village- Gorigama,
Post Office Police Station- Mahua, District- Vaishali ... Petitioner
Versus

1. The State Of Bihar
 2. The Principal Secretary, Education Department, Bihar, Patna
 3. The Director, Primary Education, Bihar, Patna
 4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
 5. The District Education Officer, Vaishali
 6. The District Programme Officer Establishment, Vaishali
- ... Respondents

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Appearance :

For the Petitioner : Mr. Binod Kumar, Adv.
For the Respondents : Mr. Madhaw Pd. Yadaw, GP XXIII with
Mr. Sanjay Kumar, AC to GP XXIII

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

2 01-05-2019 Heard the learned counsel for the petitioner and the learned
counsel appearing for the State.

Petitioner retired on 31.01.2016 while posted as Headmaster,
Middle School, Singhara, Vaishali. After his retirement, the office of
the Accountant General, Bihar, Patna, had sanctioned gratuity, pension
as well as commutation of pension to the petitioner.

Learned counsel for the petitioner is aggrieved by the order,
dated 28.12.2016, issued by the District Programme Officer
(Establishment), Vaishali, stating therein that since a departmental
proceeding is pending against the petitioner, a sum of Rs.10,00,000/-
on account of gratuity has been withheld. Learned counsel for the
petitioner submits that all the other retiral benefits has been paid,
pension commuted and paid and even month-to-month 100% pension
is being given to him. He submits that the petitioner had earlier
moved this Court in C.W.J.C. No. 11925 of 2013, which was disposed
of on 19.07.2013, along with other analogous cases wherein the



allegation against the petitioner and others was that they had not accounted fund which they had received for certain civil schemes. This Court while keeping the departmental proceeding in abeyance, directed the Director, Primary Education, to take a final decision on or before 31st December, 2013. The order passed in C.W.J.C. No. 11925 of 2013 and analogous cases is annexed as Annexure 2.

The learned counsel for the petitioner submits that no decision was taken by the Director and after his superannuation although Pension Payment Order for gratuity has also been prepared, but, the same is forfeited for the time being due to pendency of departmental proceeding.

In the counter affidavit the State has merely stated that since a departmental proceeding initiated against the petitioner has to continue, hence, a sum of Rs.10,00,000/- has been withheld from gratuity.

Learned counsel for the petitioner submits that in similar matter in the case of Rajeshwar Prasad Singh Vrs. The State of Bihar & Ors. (C.W.J.C. No. 499 of 2017), dated 16.10.2017, this Court had observed that since full and final gratuity and pension have been fixed and commutation of pension which has been paid to the said employee, the departmental proceeding which was never converted under Rule 43(b) of the Bihar Pension Rules, it will be presumed that



no departmental proceeding is pending against the petitioner.

The present writ is **allowed** in terms of the order passed in C.W.J.C. No. 499 of 2017 in the case of Rajeshwar Prasad Singh Vrs. The State of Bihar & Ors.

The District Programme Officer (Establishment), Vaishali, respondent no. 6, is directed to make payment of the full amount of gratuity sanctioned to the petitioner within a period of three months from the date of receipt/production of a copy of this order. If the gratuity is not paid within the period of three months, the petitioner is entitled to 7% interest from the date it became due till the date of actual payment. In case of payment of interest, the State Government shall be at liberty to recover the amount of interest from the officer(s) responsible for the delay caused in payment of amount of gratuity in accordance with law.

(Nilu Agrawal, J)

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