

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.437 of 2017

In
Civil Writ Jurisdiction Case No.21821 of 2012

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Digvijay Singh, Son of Late Basudeo Singh, Resident of Village and P.O.
Ratsar, Police Station- Garwar, District- Ballia (U.P.)

... .. Appellant/s

Versus

1. The State of Bihar
2. The Irrigation Commissioner cum Secretary, Water Resources Department,
Government of Bihar, Sinchai Bhawan, Patna.
3. The Joint Secretary, Irrigation Department, Government of Bihar, Sinchai
Bhawan, Patna.
4. The Special Secretary, Irrigation Department, Government of Bihar, Sinchai
Bhawan, Patna.
5. The Deputy Secretary to the Government of Bihar, Sinchai Bhawan, Irrigation
Department, Patna.
6. The Deputy Secretary, Finance Department, Department of Personal Claim
Fixation Cell, Old Secretariat, Patna.
7. The Chief Engineer, Rural Development Department, Special Cell, Harding
Road, Barrak No. 2, Patna.
8. The Chief Engineer, Jal Vigyan Evam Yojna Ayojan, Water Resources
Department, Anisabad, Patna.
9. The Accountant General, Birchand Patel Path, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Janardan Singh
For the Respondent/s : Mr. Anjani Kumar-AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 09-01-2019

Heard learned counsel for the parties.



This intra Court appeal arises from the judgment and order dated 08.09.2016 of the learned Single Judge passed in C.W.J.C. No. 21821 of 2012, whereby the writ petition was dismissed taking note of the earlier order passed in C.W.J.C. No. 9967 of 1998, whereby a direction was issued for payment of provisional pension, provisional gratuity to the extent of 90 per cent and leave encashment.

By filing the writ petition, the petitioner claimed 100 per cent pension despite the fact that criminal case arising from Vigilance Case No. 17 of 1987 instituted under sections 467, 468, 471, 420, 109 and 120B of the Indian Penal Code and the provisions of the Prevention of Corruption Act, was pending trial. The learned Single Judge taking note of the orders passed in C.W.J.C. No. 9967 of 1998 found no reasons for its modification or grant of relief so prayed by the petitioner for payment of 100 per cent pension and, accordingly, dismissed the writ petition.

The issue as regards the entitlement of superannuated employee facing disciplinary/judicial proceedings, to draw pension, gratuity and leave encashment came up for consideration before the Full Bench of this Court and vide Judgment reported in 2018 (2) P.L.J.R. page 933



(Arvind Kumar Singh Vrs. State of Bihar), the full Bench concluded at paragraph-25 as follows:

When this amendment was incorporated on 19th of July, 2012, the State of Government was aware of the earlier statutory circular dated 31st of July, 1980 and the administrative circulars of 1974, but while incorporating a provision in the rule itself by amending it, i.e. Rule 43(c), the rule maker consciously used the word "pension" only without carving out an exception with regard to withholding of gratuity. The omission of the word "gratuity" in the amended provisions of Rule 43(c), in our considered view, is a deliberate and conscious omission on the part of the rule maker. The rule maker knew that pension includes gratuity and when they speak about payment of provisional pension, the rule of interpretation mandates us to hold that it would mean payment of not only provisional pension but also gratuity until and unless the rule specifically provides for



withholding of gratuity. That being so, once Rule 43(c) was incorporated into the statute and when Rule 43(c) does not empower the Government to withhold gratuity and when gratuity includes pension, in view of the provisions of Rule 27, the contention of the State Government and the learned Advocate General cannot be accepted. We have to hold that once Rule 43(c) was incorporated in the statutory rule, the effect of the earlier statutory notification dated 30th of July, 1980 is wiped out, nullified or deemed to have been repealed. Incorporation of Rule 43(c) on 19th of July, 2012 will have the effect of annulling the earlier notification dated 30th of July, 1980 or the circulars of 1974 and therefore, once a statutory provision- Rule 43(c) is incorporated in the rule itself, it has to be given its full and complete meaning, by adopting a literal meaning to each and every word used therein, and if this principle of statutory interpretation is followed, the



contention of the State Government has to be rejected and we have no hesitation in holding that after coming into force of the amendment to the Pension Rules by incorporating Rule 43(c) on 19th of July, 2012, an employee who is facing departmental inquiry or judicial proceeding on the date of his superannuation would be entitled to provisional pension which would include gratuity to the tune of an amount not less than 90 per cent."

The conclusion drawn by the Full Bench at paragraph-25 answers the issue of payment of pension, gratuity to the extent of 90 per cent until pendency of a Judicial/Departmental proceeding subject to its outcome. It is not in dispute that the judicial proceeding so initiated against the petitioner-appellant, as noted above, has ended in conviction.

Mr. Janardhan Singh, learned counsel appearing on behalf of the appellant, informs that the judicial proceeding so initiated against the petitioner has ended in conviction but an appeal has been preferred by the appellant-petitioner as against the judgment and order of conviction.

Be that as it may, having noted the circumstances



that continue to exist as of today, we find no infirmity with the opinion expressed by the learned Single Judge to dismiss the writ petition. The Letters Patent Appeal is, accordingly, dismissed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2019
Transmission Date	NA

