IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8476 of 2017

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Md. Ataur Rahman, Son of Late Tahir Hussain, Resident of Jafar Colony, Near Fena Surf Factory, Sabjpura, Phulwari Shariff, P.S.-Phulwari Sharif, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of General Administration, Government of Bihar.
2. The Deputy Secretary, Department of General Administration, Govt. of Bihar.
3. The Treasury Officer, Patna Sinchai Bhawan, Patna
4. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Asif Kalim, Advocate
For the State	:	Mr.Sheo Shankar Prasad- SC8
For Accountant General	:	Mr.Rajnandan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
Date : 03-07-2019

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel for the Accountant General.

This writ application has been filed for the following reliefs :-

(A) For issuance of an appropriate writ, order or direction for commanding the respondent authorities to pay the retirement dues of Rs. 19,55,121/- (Rupees nineteen lakh one hundred twenty one only) like Gratuity, Earned Leave and Commuted Pension amount to the petitioner as yet petitioner has not received these amount.

(B) For issuance of an appropriate writ, order or direction for commanding the respondent authorities to provide the calculation chart with regard to dues of the petitioner before the authorities concerned.

The brief facts of the case is that the petitioner was appointed as Deputy Collector under Bihar Administrative services on 26.12.1985 and superannuated from service on 30.11.2013. When the petitioner was posted as Block Development Officer at Chauradano Block in the year 2002, then some irregularities was found in the various schemes of the government and accordingly a departmental proceeding was initiated against the petitioner, he was suspended on 14.09.2002 by Memo No. 7560, and for the same offences a criminal proceeding was also initiated.

In the said departmental proceeding, the petitioner was exonerated from all charges. However, the respondents sat over the matter on 23.11.2004 vide Memo No. 10129 suspension of the petitioner was revoked and he was asked to join at the headquarter.

Learned counsel for the petitioner has further submitted that when he was posted as Senior Deputy Collector at Bhojpur, then he came to know that when he was posted as Block Development Officer, Mahishi, District Saharsa, then a show cause was asked to file about non adjustment of the advance amount for the various scheme. And petitioner given his explanation thereon.

Thereafter, the petitioner remained in service and superannuated from the service on 30.11.2013 and after retirement, the petitioner's pension was fixed provisionally and accordingly petitioner is withdrawing his pension. Learned counsel for the petitioner further submitted that till his retirement, he was never communicated with regard to the departmental proceeding whereas the same is going on or concluded. The petitioner had given two representations dated 20.03.2015 and 08.06.2015 to the respondents for giving his dues but they neither responded to the representation of the petitioner nor communicated the reason for non payment of Gratuity, Earned Leave and commuted pension amount. After retirement, petitioner received a letter dated 08.04.2015 and he was asked to file a representation over the enquiry report. According, the petitioner filed his representation dated 27.04.2015 and prayed for discharge from the charges against him.

Thereafter, petitioner received a Memo No. 17964 dated 31.12.2015 whereby punishment of deduction of 10%

pension amount from him for the three years was inflicted against the petitioner for the charges of non adjustment of the advance amount and providing the assistance in defalcation (Annexure-6 of the writ application).

Learned counsel for the petitioner relied upon a decision of Full Bench rendered in the case of A**rvind Kumar Singh vs. State of Bihar and others** reported in **2018(2) PLJR 933.**

On the other hand, learned counsel for the respondents submitted that the allegation levelled against the petitioner is that when the petitioner was posted as a Block Development Officer, Mahishi in the District of Saharsa, huge amount of Rs. 3.63/- crores given as advance was not adjusted by him. The District Magistrate, Saharsa, vide its letter no. 132 dated 30.10.2013 sent its report stating therein that the petitioner has not taken any action or issued any notice to the employees for adjustment of advance. The District Magistrate has further submitted that when the petitioner was handing over the charge of the said Block on 12.01.2001, Rs. 3,63,50,802/- was pending as advance. Taking the seriousness and nature of allegation, vide Resolution No. 18756 dated 16.12.2013, departmental proceeding was initiated against the petitioner.

The Conducting Officer vide its letter no. 562 dated 02.03.2015 submitted his enquiry report mentioning inter alia that when the petitioner was handed over the charge of the said Block, the amount related to an advance was existing as Rs. 3,63,50,802/-. As such during the period of posting of the petitioner as the Block Development Officer, Mahishi, the aforesaid amount of an advance was not adjusted by him. Moreover, the petitioner could not even bother to take proper action against the employees/persons involved in the matter.

On receipt of the enquiry report and thereafter maintaining the due process for proved charges leveled against him, 10% pension of the petitioner was deducted vide Resolution No. 17964 dated 31.12.2015 from pension of the petitioner only for three years under the provision of Section 43 (b) of the Bihar Pension Rules, 1950 (vide Annexure-B of the counter affidavit). In another case, when the petitioner was posted as a Block Development Officer, Chhoradano, Chhauradano P.S. Case No. 119 /2002 was registered against the petitioner and the petitioner was made named accused in the aforesaid case, which is pending.

The respondents further submitted vide letter no. 17368 dated 11.11.2013 as Annexure-A of the counter affidavit.

As per the said letter, the petitioner was granted 90% provisional pension. And further 10% pension, full gratuity and leave encashment has been withheld due to the pendency of the criminal case against the petitioner. The said criminal case is pending adjudication before the competent court.

The punishment is of 10% withholding of pension for three years, which has expired on 30.12.2018, therefore, as per the said punishment, the withholding of 10% pension ought to have restored to the petitioner after expiry of three years.

Withholding of the gratuity is concerned, the same is no more res integra. In view of the decision rendered in the case of **Arvind Kumar Singh (supra)** in which placing reliance upon a Full Bench, it has been held in paragraph no. 25, which is as follows :-

> " When this amendment was incorporated on 19th of July, 2012, the State 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."

In the case of **Arvind Kumar Singh (supra)**, the Full Bench held in paragraph-29 as far as leave encashment is concerned, the Government is well within its power in withholding leave encashment.

In view of the legal position settled by the Full Bench, the State Government has power to withhold the amount of leave encashment. However, he is entitled to receive the amount of gratuity. The petitioner is entitled to receive the full pension and also amount of commutation of the pension.

In view of the aforesaid facts of the case and law laid down by this Court and the fact that criminal case is still pending against the petitioner, I am of the opinion that the petitioner is entitled for the 90% of gratuity, full pension and also amount of commutation of the pension and petitioner is not entitled to receive the amount of leave encashment due to pendency of the criminal case against him.

In view of the aforesaid fact, letter no. 14/P-408/201 dated 15th November, 2013 (Annexure-A of the counter affidavit) hereby quashed to that extent and so far leave encashment and 10% gratuity are concerned, same is dependent upon the outcome of the criminal proceeding, which is pending against the petitioner till date.

With the aforesaid observation/direction, the present writ application is partly allowed.

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-07-2019
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