

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 4051 of 2018

Arising out of

Civil Writ Jurisdiction Case No. 18403 of 2016

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Anil Kumar, Son of Late Nand Kumar Prasad, Resident of Chaturbhuj
Apartment, Munnachak, P.S.- Patrakar Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Minor Water Resources Department, Bihar, Patna, namely Mr. Sudhir Kumar, IAS.
2. The Principal Secretary, Minor Water Resources Department, Bihar, Patna, namely Mr. Sudhir Kumar, IAS.
3. The Principal Secretary, Water Resources Department, Bihar, Patna.
4. The Additional Secretary, Minor Water Resources Department, Bihar, Patna, namely Mr. Kumar Arun Prakash.
5. The Joint Secretary, Minor Water Resources Department, Bihar, Patna.
6. The Officer of Special Duty, Minor Water Resources Deptt., Bihar, Patna.
7. The Accountant General, Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Mr. Avanindra Kumar Jha and Mr. Jitendra Acharya, Advocates
For the State	:	Mr. Ranjan Kumar Singh, AC to PAAG 2
For the Accountant General	:	Mrs. Namrata Mishra, Ms. Archana Jha and Mr. Naresh Dikshit, Advocates

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 05-09-2019

Heard learned counsel for the petitioner and learned AC
to PAAG 2 for the State.

2. The present application has been filed with regard to
taking appropriate action against the opposite parties no. 2 and 4
in view of having made patently wrong statement before the Court
in CWJC No. 18403 of 2016, as recorded in paragraph no. 8 of the
order in the said writ petition dated 03.07.2018.



3. The writ petition was filed seeking payment of retiral dues of the petitioner.

4. Having considered the facts and circumstances of the case, the issue which crystallizes is as to whether in the particular facts and circumstances of the present case, withholding of 10% pension and commutation value of pension by the State authorities is permissible in law.

5. The stand of the authorities was that since an FIR has been lodged against the petitioner alleging irregularity in purchase of certain items during his tenure, 10% of pension was withheld and further that unless full pension is granted, commutation cannot be considered.

6. Learned counsel for the petitioner submitted that the only power available to the authorities is to resort to either Rule 43(b) or Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules').

7. It was submitted that the same does not permit withholding of 10% pension as 43(b) contemplates that only in a circumstance where there is a judicial proceeding, which includes criminal proceeding, the authorities can do that provided the criminal case is for an event which took place not more than four years prior to the lodging of such criminal case. It was submitted



that in the present case, the FIR has been lodged in the year 2018, whereas the incident is of the year 2004 and, thus, beyond the period prescribed by the Rules. It was further submitted that the power under Section 139 of the Rules cannot be invoked for the reason that it is only after the final pension of the petitioner is settled which has not been done.

8. Learned counsel for the State fairly submitted that there is no legal provision to withhold 10% remaining pension of the petitioner only because an FIR had been lodged, as has been done.

9. The Court deems it appropriate to reproduce Rules 43(b) and 139 of the Rules which read as under:

“43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

(a) such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and



(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation.- For the purposes of the Rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to have been instituted;-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a Civil Court.

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139(a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under the control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part



while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years form the date of the order sanctioning the pension was first passed.”

10. Having regard to the aforesaid, the application stands disposed off by modifying the order dated 03.07.2018 passed in CWJC No. 18403 of 2016 to the extent that the authorities are directed to release the remaining 10% withheld pension of the petitioner and pay the same, including arrears, within one month from today. Thereafter, they shall be obliged to consider the request for commutation of pension of the petitioner which has already been submitted by the petitioner and pass appropriate orders within one month thereof.

11. The prayer of learned counsel for the petitioner with regard to payment of interest can be considered only when he is absolved in any proceeding which may be pending.

(Ahsanuddin Amanullah, J.)

P. Kumar

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