IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.488 of 2017
In
Letters Patent Appeal No.1031 of 2013

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1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, General Administrative Department, Govt. of Bihar, Patna.
3. Joint Secretary, General Administrative Department, Govt. of Bihar, Patna.
4. Additional Secretary, General Administration Department, Govt. of Bihar, Patna.
5. Principal Secretary, Finance Department, Government of Bihar, Patna.

... ... Petitioners

Versus

1. Nagendra Pathak, son of late Lakhhan Pathak, resident of village Bar Pathak, Bigha, Police Station Sherghati, District Gaya.
2. Account General, Bihar.

... ... Opposite Parties

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Appearance :
For the Petitioners : Mr. Raghvanand, Advocate
For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA)

5 09-01-2019 Heard Mr. Raghvanand, learned counsel appearing on behalf of the State on I.A. No. 9029 of 2017 as well as on the merit of the Civil Review petition.

The learned counsel for the State submits that the judgment of the Division Bench was passed on 08.05.2014. The State filed Civil Review immediately thereafter in the year 2015, but Stamp Reporter pointed out some defects. The token number was given to the petitioners, but due to non-removal of defects the token number was cancelled. Thereafter the petitioners filed the present Civil Review petition for reviewing the order dated 08.05.2014 passed in L.P.A. No.1031 of 2013, by which the order of withholding of 10% pension, full gratuity and leave encashment, passed by the learned Single Bench on 03.07.2012 in C.W.J.C. No. 2831 of 2012, was set aside and L.P.A. No.1031 of 2013 was allowed.

Learned counsel for the petitioners further submits that on account of some time taken in seeking opinion, delay has been caused. Division Bench of this Court by order dated 08.05.2014 passed in L.P.A. No.1031 of 2013 has not considered the amendment brought about and inserted in Rule 43(c) of Bihar Pension Rules on 19.07.2012. It is submitted that Rule 43(c) authorises the employer to withhold pension of an employee against whom judicial proceeding or departmental proceeding is pending. Therefore, the judgment requires to be reviewed.

We do not find any force in the submissions of the learned counsel for the petitioners on the simple ground that Respondent No.1 Nagendra Pathak retired on 31.01.2011 and according to Rule 43(b) without holding guilty the pension of the employee cannot be withheld merely on the ground of pendency of judicial or departmental proceeding. Rule 43(c) was inserted by way of amendment on 19.07.2012 and the respondent Nagendra Pathak retired on 31.01.2011 the amended provision of Rule 43(c) has not been made retrospective.

Therefore, we do not find any merit in the Civil Review petition. The limitation in filing the Civil Review petition is allowed and the limitation is condoned, but on account of the fact that we do not find any merit in the Civil Review petition, Civil Review petition is dismissed.

(Prabhat Kumar Jha, J)

(Sudhir Singh, J)

Narendra/-

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