

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.570 of 2018

In

Civil Writ Jurisdiction Case No.5380 of 2014

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1. The State of Bihar through the Secretary, Road Construction Department, Vishweshariya Bhawan, Bailey Road, Patna
 2. The Special Secretary, Road Construction Department, Vishweshraiya Bhawan, Bailey Road, Patna.
 3. The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna.
 4. The Under Secretary, (Accounts), Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna.

... .. Appellant/s

Versus

1. Ramanand Ram, Son Of Late Tengar Ram, Resident Of Mohalla Srikrishna Nagar, West of Shiv Mandir, Police Station Aurangabad, District - Aurangabad.
2. The Principal Secretary, Finance Department, Old Secretariat, Patna.
3. The Director, Provident Fund, Pant Bhawan, Patna.
4. The Treasury Officer, Vishweshraiya Bhawan, Bailey Road, Patna
5. The Treasury Officer, Aurangabad.
6. The Estate Officer, Building Construction Department, Vishweshraiya Bhawan, Patna.
7. The Executive Engineer, Rent Division, Building Construction Department, Shastrinagar, Patna.
8. The Accountant General (Accounts and Entitlement), Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG-4
Mr.Sanjay Kumar, AC to AAG- 4
For the Respondent/s : Mr.Rupak Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-06-2019

Heard learned counsel for the appellants and Shri

Rupak Kumar, learned counsel for the respondent-petitioner.



2. In this appeal the judgment of the learned single Judge has been assailed on several grounds, but the primary question, which now stands concluded by the Full Bench judgment in the case of *Arvind Kumar Singh vs. The State of Bihar, reported in 2018(2) PLJR 933*, is that the direction issued by the learned single Judge in the impugned judgment dated 22.10.2016 will have to be modified.

3. The dispute, in short, relates to release of pension and gratuity and leave encashment. So far as the pension and gratuity is concerned, the same is admissible and accordingly L.P.A. No.2156 of 2016 in this regard, arising out of C.W.J.C. No.5380 of 2014, has been rightly allowed on 26.09.2018. A copy of the said judgment has been placed before the Court.

4. The State of Bihar in the present case questions the correctness of the release of leave encashment to the respondent-petitioner contending that this aspect of the matter has been categorically dealt with by the Full Bench in paragraph 30 of the reported judgment, which is extracted herein under :

“30. Accordingly, we answer the questions referred to us in C.W.J.C. No.15328/2016 in the following manner:- Patna High Court CWJC No.15328 of 2016 dt. 02.05.2018 (1). The law laid down by the Bench of this Court in the case of Vijay Kumar



Mishra (supra) holding that Leave Encashment of a Government employee can be withheld, is a correct proposition of law, however, we clarify that withholding of the leave encashment is not by virtue of the provisions of the Bihar Pension Rules or the leave rules, but, encashment of leave, being governed by executive instructions, its withholding by executive instruction is permissible and is in accordance with law. To that effect, the findings recorded and the observations made in the case of Vijay Kumar Mishra (supra) may be treated as incorrect and not indicating the correct position.”

5. In view of the aforesaid enunciation of the law by the Full Bench, the appeal is allowed to the extent that the direction given by the learned single Judge under the impugned order dated 22.10.2016 for release of leave encashment is set aside.

6. The appeal is allowed to the above extent. No order as to costs.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

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