# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.4614 of 2020**

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Subeer Kumar Bhattacharya Son of Sri Kanai Lal Bhattacharya, Resident of House No. D-30, Kharkai Enclave, Near Bharat Sevashram, P.S. Sonari, District- East Singhbhum (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner Tax Commissioner, Commercial Tax Department, Government of Bihar, Patna.
2. The Deputy Secretary Commercial Tax Department, Government of Bihar, Patna.
3. The Treasury Officer, Government of Bihar, Vikash Bhawan, Patna.
4. The Accountant General (A and E), Veer Chand Patel Path, Patna.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.Bhola Kumar, Adv.
For the State : Mr.Vivek Prasad (Gp7)
For the Accountant Gen. Mr. Ramkinkar Choubey,Adv.

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**
**ORAL JUDGMENT**
**Date : 24-09-2020**

Heard learned counsel for the petitioner and learned counsel for the respondents, through video conferencing.

The petitioner, who superannuated on 30.09.2014 as Assistant Commissioner, Commercial Tax Department, Government of Bihar, has filed the instant writ application praying for quashing the order dated 16.10.2019 (Annexure-4) passed by the Deputy Secretary, Commercial Tax Department, Government of Bihar, whereby, consequent to the conviction and sentence of the petitioner in a criminal case lodged by the CBI (Central Bureau of Investigation) Court in Ranchi, the payment of pension and gratuity has been stopped taking recourse to Rule 43(a) of the Bihar Pension Rules.

The case of the petitioner in brief is that while in service and posted as a Treasury Officer in Deoghar, he was made an accused in a criminal case bearing RC Case No. 64A/1996 PAT lodged by the CBI. He was convicted in the said case on 23.12.2017 and sentenced by order dated 6.1.2018 to undergo imprisonment of three and half years and fine of Rs.5 lakhs. It is the case of the petitioner that he has preferred an appeal against the said judgment of conviction and order of sentence in the Jharkhand High Court. The appeal has been admitted and he has been enlarged on bail, pending the appeal. It is further submitted that the conviction in the criminal case was in a trial arising from an FIR lodged in the year 1996 with respect to an occurrence alleged to have taken place on or before 1996 i.e. much before his superannuation in the year 2014. Referring to and relying on the Division Bench judgment in the case of **Nityanand Kumar Singh vs. State of Bihar** reported in **2016(2)PLJR315(DB)** it is submitted that the Hon'ble Division Bench has clearly held therein that Rule 43(a) of the Bihar Pension Rules does not relate to the conduct of a person during service and/or service rendered on re-employment. The Court held that it is a conduct expected of a pensioner in future after he is granted pension. The decision in Rule 43(a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to the service rendered before retirement or on re-employment. Thus, it is submitted by learned counsel that the facts of the present case is squarely covered by the Division Bench Judgment and in view of the same, the order impugned is not sustainable.

It is submitted by learned Government Pleader appearing for the State that although it is true that the petitioner retired from service on 30.09.2014 and no departmental proceeding had been initiated under Rule 43(b) of the Bihar Pension Rules, however, it is also a fact that in a criminal case pending against the petitioner, he was convicted on 23.12.2017 and has been sentenced to undergo three and a half years in custody and to pay a fine of Rs. 5 Lakhs. The judgment of conviction and order of sentence having come in the year 2017, the order impugned forfeiting the amount of pension and gratuity has been rightly passed and there is no illegality in the same.

Having heard learned counsel for the parties, on going through the judgment relied on and considering the submissions made by learned counsel for the petitioner, this Court finds that the case of the petitioner is fully covered by the judgment of the Division Bench in the case of Nityanand Kumar Singh (supra). The relevant part of paragraph no.6 of the judgment is being quoted herein below for ready reference:

> *"6. ......... The serious crime or grave misconduct under this provision, i.e. Rule 43(a) is not related to his conduct during service and/or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted pension. Thus, there is clear distinction between the aim and object of Rule 43(a) and that of Rule 43(b). Both the provisions operate in different areas having different connotations. The decision under Rule 43(a) is not on account of any departmental proceeding or any judicial proceeding instituted when the Government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. ........................ On the other hand, the future good conduct mentioned in Rule 43(a) is good conduct expected of every Government servant even after superannuation. Such future conduct is not related to his service period at all."*

So far as the facts of the instant case is concerned, the order impugned has been passed under Rule 43(a) of the Bihar Pension Rules consequent to the petitioner's conviction in a criminal case with respect to an FIR/event of 1996 i.e during his service period, the petitioner having superannuated on 30.9.2014.

Thus, in view of the facts stated above, the Court finds that the case of the petitioner is fully covered by the judgment of the Division Bench in the case of Nityanand Kumar Singh (supra) and the order impugned having been passed under Rule 43(a) of the Bihar Pension Rules is not sustainable in law. The same is set aside.

The writ application stands allowed with all consequential benefits.

**(Partha Sarthy, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | |
| **Transmission Date** | 4/11/2020 |