

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21624 of 2019

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Krishnandan Lall Son of Late Saman Singh, resident of Village- Churaman Bigha, P.O.- Bhagan Bigha, P.S.- Bena, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Animal and Fisheries Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Co-operative Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar.
4. The Accountant General of Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Raja Ram Mishra
For the Respondent/s : Mr.Raj Kishore Roy, GP-18

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 08-09-2020 The petitioner retired, on attaining the age of superannuation, from the post of Under Secretary, Animal Husbandry and Fisheries Resources Department, Government of Bihar, with effect from 31.12.2013. On the date, with effect from which the petitioner retired, admittedly, a criminal case was pending against him. This is not in dispute that charge-sheet has been submitted in the said criminal case.

2. Because of the pendency of the criminal case, full pension of the petitioner has not been authorized and instead 90% of the provisional pension has been sanctioned in his favour, which the petitioner is getting.

3. It is in this background that the present writ



application has been filed seeking direction for payment of full pension and gratuity.

4. It is the petitioner's case that some of the other persons, who too were implicated in the same criminal case, have been paid their full post retiral dues after their acquittal.

5. Counter affidavit has been filed on behalf of the respondents. Reliance has been placed on Rule 43(c) of the Bihar Pension Rules, which empowers the competent authority to withhold pension and gratuity during pendency of a criminal or departmental proceeding.

6. In response to a query made by this Court, as to whether any departmental proceeding has been initiated against the petitioner on facts which are basis for lodging of the criminal case, an affidavit has been filed to the effect that no such departmental proceeding has been initiated.

7. Rule 43(c) of Bihar Pension Rules confers jurisdiction on the competent authority to withhold pension or gratuity during the pendency of a criminal case which reads thus:-

“43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant,



the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent)."

8. Charge-sheet in the criminal case has been submitted against the petitioner on 09.01.2016.

9. Learned counsel appearing on behalf of the petitioner has contended that till date no cognizance has been taken.

10. Be that as it may, in my opinion, since charge-sheet has been submitted in the criminal case, and admittedly the judicial proceeding is pending against the petitioner which was instituted when he was in service, the relief which the petitioner is seeking, cannot be allowed, in view of the clear language of Rule 43(c) of the Rules.

11. The issue has recently been conclusively decided by the Supreme Court in its decision rendered in case of ***Dr. Hira Lal Vs. State of Bihar***, reported in **2020 (2) PLJR 29(SC)**. While considering the effect of amendment in the Bihar Pension Rules leading to insertion of Rule 43(c), the Supreme Court has held that as the amendment came into force with effect from 19.07.2012, the State Government is empowered to legally withhold 10% of pension till conclusion of the criminal proceeding, subject to the outcome of the criminal proceeding.



It is noteworthy that the Supreme Court in case of *Dr. Hira Lal* (supra) has further held that as the pension includes gratuity, as per Rule 27 of the Bihar Pension Rules, 10% of gratuity may also be withheld by the State Government, subject to the outcome of criminal case.

12. Relevant part of the concluding paragraphs No. 14 and 15 of the Supreme Court's decision in case of *Dr. Hira Lal* (supra) are being reproduced hereinbelow for the benefit of quick reference:-

“14.

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After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19.07.2012, the State is empowered to legally withhold 10% of the pension amount of the Appellant, till the criminal proceedings in R.C. Case No. 48A/1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19.07.2012 subject to the outcome of the criminal proceedings.

15. With respect to withholding of the full amount of gratuity, we find that as per Rule 27 of the Bihar Pension Rules, “pension” includes “gratuity”. With the insertion of Rule 43 (c) in the statute book w.e.f. 19.07.2012, it is clear that gratuity also could not have been withheld under administrative circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980.

The State is directed to release 90% of the gratuity payable to the Appellant within a period of 12 weeks from the date of this judgment. The balance 10%



will be released subject to the outcome of the criminal proceedings pending against him in R.C. Case No. 48A/1996.”

13. It is evident from the pleadings on record that when the petitioner retired with effect from 31.12.2013 on attaining the age of superannuation, Rule 43(c) had already been inserted in the Bihar Pension Rules and had come into operation with effect from 19.07.2012.

14. The petitioner is, admittedly, getting 90% of his pensionary benefits. The decision of the State Government to withhold rest of the pension during the pendency of criminal case cannot be said to be unjustified, there being statutory provision in this regard.

15. This is to be noted that other persons have been allowed full pensionary benefits only after their acquittal in the criminal case.

16. Considering the facts and circumstances, as noted above, I do not find any merit in this application. This application is accordingly rejected.

(Chakradhari Sharan Singh, J)

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