

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18377 of 2019

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Braj Kishore Sinha S/o Late Muneshwar Prasad Resident of Fatpur Chain,
P.o.- Fatepur, P.S.- Awtar Nagar, Distt.- Saran, at Chapra

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Health, Bihar, Patna
3. The Director-in-Chief Department of Health, Bihar, Patna
4. The District Magistrate Siwan
5. The Civil Surgeon-cum-Chief Medical Officer Siwan
6. The District Provident Fund Officer Siwan
7. The Accountant General Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar Sinha
For the Respondent/s : Mr.Ramadhar Singh (Gp25)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-08-2020

1. Heard the learned counsel for the petitioner and learned counsel appearing for the State Sri Ramadhar Singh, G.P.- 25.

2. The present writ petition has been filed for directing the respondent-authorities to pay the outstanding retiral dues i.e. 10% pension, 10% gratuity, leave encashment and statutory interest on the delayed payment of the G.P.F. amount. The petitioner has also prayed for payment of salary for the strike period i.e from 07.01.2019 to 09.02.2019 as well as full salary w.e.f. 25.12.2010 till the date of retirement i.e.



31.01.2012, apart from payment of arrears of salary as per the Sixth Pay Revision report, w.e.f. 01.04.2007 and the benefit of 3rd M.A.C.P.

3. The brief facts of the case are that the petitioner was appointed as a clerk, whereafter he had joined on the said post in the Health Department and he has been working as Clerk w.e.f. 01.05.1976. It is the case of the petitioner that while he was posted as Head Clerk in the office of Civil Surgeon-cum-Chief Medical Officer, Siwan, he got involved in one police case bearing Siwan Town PS case no. 184 of 2011, registered under Section 409 of Indian Penal Code on the charge of committing gross irregularities in purchase and distribution of medicines during the period 2005-08, not handing over the charge of Store Register and not handing over the purchase orders and bills regarding purchase of medicines worth a sum of Rs. 35 lacs relating to the period 2007-08. It is stated that the petitioner was suspended from service w.e.f. 25.12.2010, however during the course of suspension from service, the petitioner retired on 31.01.2012, whereafter the suspension order was revoked vide memo dated 28.02.2014. It is the contention of the petitioner that the petitioner has been representing before the concerned authorities regularly, however



the aforesaid outstanding retiral dues have not been paid to the petitioner herein.

4. The learned counsel appearing for the State, by referring to the counter affidavit filed on behalf of the respondent no. 5 has submitted that the petitioner retired on 31.01.2012 while working as Head Clerk, Sadar Hospital, Siwan and before that, he was placed under suspension vide Memo dated 25.04.2010 in view of the allegation of commission of financial irregularities and lodging of F.I.R. bearing Siwan Town PS case no. 184 of 2011. Nonetheless, it is stated that a sum of Rs. 3,20,740/- has been paid to the petitioner under the head of leave encashment, a sum of Rs. 38,461/- has been paid under the head of outstanding admissible dues on account of differential amount of A.C.P., a sum of Rs. 30,412/- has been paid on account of admissible dues of arrears of Sixth Pay Revision apart from a sum of Rs. 90,969/- having been paid to the petitioner pertaining to the admissible dues of differential arrears of Sixth Pay Revision. It is further stated that a sum of Rs. 16,05,185/-, including interest for six months, has been paid to the petitioner under the head of G.P.F. amount, apart from issuance of letter dated 09.07.2020, sanctioning a sum of Rs. 6,47,508/- by way of interest for the period August, 2012 to



August, 2016. It is thus submitted that apart from 10% pension and 10% gratuity, which is not admissible to the petitioner on account of the pending criminal case, all other retiral dues of the petitioner has stood paid.

5. It is the further contention of the learned counsel for the respondent-State, by referring to the counter affidavit filed on behalf of respondents no. 2 and 3, that the petitioner was suspended on 25.12.2010 by the then Civil Surgeon, Siwan on account of various charges including that of financial irregularities and on the same day, F.I.R. was lodged against the petitioner. It is stated that the Civil Surgeon has informed that the petitioner had not submitted his joining at the Headquarters during the suspension period, as a result of which the suspension allowance w.e.f 25.12.2010 till the date of retirement i.e. 31.01.2012 could not be paid, thus the petitioner is not entitled for any kind of payment for the period of suspension.

6. I have heard the learned counsel for the parties and gone through the materials on record, from which it is apparent that barring 10% pension and 10% gratuity amount, the entire retiral dues has stood paid to the petitioner herein. As far as 10% pension and 10% gratuity amount is concerned, this Court is of the view that the petitioner is not entitled to payment of the



same in view of pendency of the aforesaid criminal case/ judicial proceedings, inasmuch the trial in connection with the said Siwan Town PS Case No.184 of 2011 is pending. This aspect of the matter has been laid to rest by a Judgment rendered by the Ld. Full Bench of this Court in the case of **Arvind Kr. Singh v. The State of Bihar and others**, reported in **2018(2) PLJR 933**, paragraphs no. 23 to 30 whereof are reproduced herein below :-

“23. Now, when we analyse the entire sequence of events, we find that the pension rule when it was initially enforced on 20th of January, 1950 provided that pension shall include gratuity, meaning thereby that wherever the word "pension" is used in the pension rule, it would also include gratuity i.e.without any iota of doubt, the intention of the rule maker in incorporating Rule 27 by saying that pension includes gratuity.Rule 43, as it originally stood, had only sub rule (a) and (b) and these rules pertain to withholding or withdrawing of the pension in part or full after an employee has retired, subject to future good conduct and the effect of pecuniary loss caused to the State Government, pendency of departmental and judicial proceedings etc. Rule 43(b) was, therefore, only applicable in such cases where the employee is convicted or found guilty of misconduct. It is only after a finding of guilty is recorded in the departmental proceeding or the judicial proceeding that action could be taken for withholding the pension in part or full. That being the position, the field with regard to action to be taken in cases where finality is not attained to the departmental proceedings or the criminal case, a decision was taken to release certain pension and withhold gratuity and leave encashment by virtue of the initial two circulars issued in the year 1974 i.e. 22 nd of August, 1974 and 31st of October,1974 and finally in the form of the so-called statutory



amendment brought into force on 31st of July, 1980. Even though in the circulars of 1974 there is specific stipulations for withholding gratuity and leave encashment, but in the notification dated 31st of July, 1980, the provision is that the amount of provisional pension, as per rule, shall not be less than the maximum amount of pension admissible but it shall not be less than 90 per cent in any circumstances. Now, while incorporating this provision, in this circular (i.e. 31st July, 1980), the word "gratuity" is absent and if provisional pension as per rule is directed to be paid and if the meaning of pension as contemplated under Rule 27 is to include gratuity, it is very clear that the circular does not contemplate withholding of

gratuity. However, learned Advocate General referred to sub-clause (c) of Clause 7 of this circular to say that it is only in furtherance to the circulars of 22.08.1974 and therefore, the word "gratuity" having been used in the circulars of 1974, withholding of gratuity as per the circular of 1974 is permissible because it is incorporated in a statutory form while issuing the circular dated 31st of July, 1980.

24. Even if we, for a moment, accept this contention of the learned Advocate General then also we find that with regard to payment of provisional pension and gratuity the field was initially occupied by two circulars and one notification i.e. 22.08.1974, 31.10.1974 and 31st of July, 1980 respectively, the State Government in its own wisdom thought it appropriate to amend the pension rules again and incorporated [Section 43](#) (c) on 19th of July, 2012 and when [Section 43\(c\)](#) was incorporated on 19th of July, 2012 in the matter of fixing the amount of provisional pension to be paid in cases where an employee is facing a departmental proceeding or a criminal case, the provision incorporated for the sake of repetition reads as under:-

"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). This will come into force with immediate effect."

25. *When this amendment was incorporated on 19th of July, 2012, the State Government was aware of the earlier statutory circular dated 31st of July, 1980 and the administrative circulars of 1974, but while incorporating a provision in the rule itself by amending it, i.e. Rule 43(c), the rule maker consciously used the word "pension" only without carving out an exception with regard to withholding of gratuity. The omission of the word "gratuity" in the amended provisions of Rule 43(c), in our considered view, is a deliberate and conscious omission on the part of the rule maker. The rule maker knew that pension includes gratuity and when they speak about payment of provisional pension, the rule of interpretation mandates us to hold that it would mean payment of not only provisional pension but also gratuity until and unless the rule specifically provides for withholding of gratuity. That being so, once Rule 43(c) was incorporated into the statute and when Rule 43(c) does not empower the Government to withhold gratuity and when gratuity includes pension, in view of the provisions of Rule 27, the contention of the State Government and the learned Advocate General cannot be accepted. We have to hold that once Rule 43(c) was incorporated in the statutory rule, the effect of the earlier statutory notification dated 30th of July, 1980 is wiped out, nullified or deemed to have been repealed. Incorporation of Rule 43(c) on 19th of July, 2012 will have the effect of annulling the earlier notification dated 30th of July, 1980 or the circulars of 1974 and therefore, once a statutory provision- Rule 43(c) is incorporated in the rule itself, it has to be given its full and complete meaning, by adopting a literal meaning to each and every word used therein, and if this principle of statutory interpretation is followed, the contention of the State Government has to be rejected and we have no hesitation in holding that after coming into force of the amendment to the Pension Rules by incorporating Rule 43(c) on 19th of July, 2012, an employee who is facing departmental inquiry or*



judicial proceeding on the date of his superannuation would be entitled to provisional pension which would include gratuity to the tune of an amount not less than 90 per cent.

26. Having held so, with regard to pension and gratuity, we are now required to consider the next question pertaining to grant of leave encashment to a retired employee.

27. As far as leave encashment is concerned, we find that there is no statutory provision, rule or regulation providing for encashment of Earned Leave. During the course of hearing, we had asked specific questions to the counsel appearing in the matters and we were informed that there is no statutory rule governing grant of leave encashment. It was stated that it is based on executive instructions and the statutory provision is only for granting Earned Leave to a Government employee.

28. The Bihar Service Code, Chapter-VI deals with general conditions of leave and from Rule 149 onwards, provisions have been made for grant of various kinds of leave like Casual Leave, Special Leave, Medical Leave, Extraordinary Leave, Hospital Leave etc. and under this Chapter from Rule 227 onwards provisions have been made for grant of Earned Leave. Under Rule 227 (1) it is stipulated that the Earned Leave admissible to a Government servant in permanent employment shall be in accordance to Clause (a) and (b) stipulated therein and under sub-section 2 it is contemplated that a Government servant shall cease to earn such leave when the Earned Leave due to him has reached a particular level. The method and principle for calculating Earned Leave etc. are provided in the Rule. Nowhere in this rule is there a provision for permitting leave encashment. It is for the first time by an executive instruction bearing No. 4564 dated 6th of July, 1993, that a provision has been made for encashment of unused Earned Leave after retirement and in this circular in Paragraph 2 the following stipulations have been made:-

“2. उपर्युक्त संदर्भ में अधोहस्ताक्षरी को पुनः यह स्पष्ट कर ने का निर्देश हुआ है कि छुट्टी स्वीकृत कर ने के लिए सक्षम पदाधिकारी स्वविवेक से सम्पूर्ण नगद राशि अथवा उस के निश्चित अंश के भुगतान को वैसे मामले में रोक सकते हैं, जिसमें सेवा-निवृत्त कर्मचारी के विरुद्ध सेवा-निवृत्ति की तिथि तक



किसी भी तरह की विभागीय कार्यवाही, फौजदारी मुकदमा अथवा न्यायिक जाँच का अन्तिम निष्पादन नहीं हो पाया हो और जिसमें जाँच के फलाफल के रूप में वसूली की क्षीण संभावना भी विद्यमान हों। जाँच के अन्तिम निष्पादन होने पर रोके गये भुगतान को विमुक्त कर दिया जायेगा। परन्तु जाँच के परिणाम स्वरूप यदि कोई वसूली करने का निर्णय हो, तो वसूली करने के बाद ही शेष राशि विमुक्त की जायेगी। " (Emphasis supplied

29. From the aforesaid, it is clear that as far as leave encashment is concerned, leave encashment is not provided for in the Pension Rule. Under the Bihar Service Code, a provision has been made for grant of Earned Leave and by an executive instruction issued on 6th of July, 1993, a provision is made for encashment of Earned Leave and while making the said provision a condition is stipulated that an employee shall not be granted encashment of Earned Leave till finalization of the departmental inquiry or the judicial proceeding. When the terms and conditions with regard to encashment of leave is not governed by any statutory provision and when the same is granted by an executive or administrative decision of the State Government so long as the administrative decision to withhold encashment of Earned Leave subsists, then on the happening of such circumstances, as are contemplated, we see no reason to hold that leave encashment can be granted even in cases where the employee at the time of retirement is facing departmental or judicial proceeding. The law laid down in this regard in the cases referred to hereinabove do not consider this aspect of the matter; all the cases proceeded under the mistaken assumption that the leave encashment is provided for in the Pension Rules, and, therefore, we have no hesitation in holding that when an employee is facing a criminal case or a departmental proceeding, at the time of his retirement, the Government is well within its power in withholding leave encashment.

30. Accordingly, we answer the questions referred to us in C.W.J.C. No. 15328/2016 in the following manner:-

(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.

(2). As far as the second question is concerned, we answer it by holding that the law laid down by the Bench of this Court in the case of State of Bihar and others Vs. Mozaffar Hassan (supra) and by the learned Single Judge in the case of Ram Prakash Yadav (supra) and the law laid down in the case of Vijay Kumar Mishra (supra) to hold that gratuity can also be withheld under the provisions of the Bihar Pension Rules is an incorrect proposition of law. It has not been correctly held. Gratuity cannot be withheld in view of the provisions of Rule 43(c) of the Bihar Pension Rules and the discussion made by us hereinabove, to that extent the law laid down in the case of Vijay Kumar Mishra and Mozaffar Hassan (supra) by the coordinate Division Bench stand overruled.”

7. It would also be useful to refer to a recent judgment rendered by the Hon'ble Apex Court in the case of ***Dr. Hiralal v. The State of Bihar and others***, reported in ***(2020) 4 SCC 346***, paragraphs no. 7, 17 to 22, 24 and 26 to 30 whereof are reproduced herein below :-

"7. The issue which remained for consideration was with respect to withholding payment of 10% of the pension and full amount of gratuity.

17. Government Resolution No. 3104 dated 31-7-1980, provided that where departmental or judicial proceedings were initiated during the service period of a government servant, and were not concluded or finally disposed of till the date of retirement, then



provisional pension under Circulars dated 22-8-1974 and 31-10-1974 would be paid. The amount of provisional pension was, however, increased from 75% to 90% of the maximum amount of pension admissible.

18. In our considered view, the Circulars dated 22-8-1974 and 31-10-1974, and Government Resolution No. 3104 dated 31-7-1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law.

19. The Government Resolution dated 31-7-1980 came up for consideration before this Court in State of Jharkhand v. Jitendra Kumar Srivastava [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] . After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31-7-1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a government servant during the pendency of judicial or departmental proceedings. This Court held that : (SCC pp. 216-17 & 220-21, paras 9-11, 13 & 16-17)

“9. Having explained the legal position, let us first discuss the rules relating to release of pension.

*10. The present case is admittedly governed by the Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:****

11. From the reading of the aforesaid Rule 43(b), following position emerges:

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not



provided under this Rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

13. A reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. - Only - when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

16. ... A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different." (emphasis supplied)

It was held that pension is "property" within the meaning of Article 300-A of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of Article 300-A. It was further held that in the absence of statutory rules permitting withholding of pension or gratuity, the



State could not do so by way of executive instructions. It was observed that : (Jitendra Kumar Srivastava case [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] , SCC p. 221, para 17)

“17. ... so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.”(emphasis supplied)

20. The position has, however, changed with the amendment to the Bihar Pension Rules on 19-7-2012 by the Governor of Bihar in exercise of the powers under Article 309 of the Constitution, whereby clause (c) has been inserted in Rule 43, which reads as follows:

“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 per cent).”

21. Rule 43(c) provides that where a departmental proceeding or judicial proceeding is initiated during the service period of a government servant, and prosecution had been sanctioned but not concluded till superannuation, the provisional pension payable shall be less than the maximum admissible amount, but shall in no case be less than 90%.

22. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service. [State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210 : (2014) 1 SCC (Civ) 315 : (2014) 2 SCC (L&S) 570] The right to receive pension of a public servant has been held to be covered under the “right to property” under Article 31(1) of the Constitution by a Constitution Bench of this Court in Deokinandan Prasad v. State of Bihar [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 : 1971 Supp SCR 634] , which ruled that : (Deokinandan Prasad case [Deokinandan



Prasad v. State of Bihar, (1971) 2 SCC 330 : 1971 Supp SCR 634] , SCC pp. 343-44, paras 30-31 & 33)

“30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India [Bhagwant Singh v. Union of India, 1962 SCC OnLine P&H 27 : AIR 1962 P&H 503] . It was held that such a right constitutes “property” and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [Union of India v. Bhagwant Singh, 1964 SCC OnLine P&H 275 : ILR (1965) 2 P&H 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is “property” within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as “property” cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. State of Punjab [K.R. Erry v. State of Punjab, 1966 SCC OnLine P&H 255 : ILR (1967) 1 P&H 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions [Bhagwant Singh v. Union of India, 1962 SCC OnLine P&H 27 : AIR 1962 P&H 503] · [Union of India v. Bhagwant Singh, 1964 SCC OnLine P&H 275 : ILR (1965) 2 P&H 1] of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even



though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence, we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order, dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner un-



der Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable.”(emphasis supplied)

24. The right to receive pension has been held to be a right to property protected under Article 300-A of the Constitution even after the repeal of Article 31(1) by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20-6-1979, as held in State of W.B. v. Haresh C. Banerjee [State of W.B. v. Haresh C. Banerjee, (2006) 7 SCC 651 : 2006 SCC (L&S) 1719] .

25. The Division Bench of the Patna High Court in the impugned judgment [Hira Lal v. State of Bihar, 2017 SCC OnLine Pat 3627] has relied solely on the earlier decision of a Coordinate Bench of the Patna High Court in Vijay Kumar Mishra v. State of Bihar [Vijay Kumar Mishra v. State of Bihar, (2017) 1 PLJR 575] to deny the reliefs sought by the appellant. Pertinently, the judgment in Vijay Kumar Mishra [Vijay Kumar Mishra v. State of Bihar, (2017) 1 PLJR 575] was overruled by a Full Bench of the Patna High Court in Arvind Kumar Singh v. State of Bihar [Arvind Kumar Singh v. State of Bihar, 2018 SCC OnLine Pat 749 : 2018 Lab IC 2937 : (2018) 159 FLR 143] .

26. In view of the above, we hold that the respondent State was unjustified in withholding 10% pension of the appellant under administrative Circulars dated 22-8-1974 and 31-10-1974 and Government Resolution No. 3104 dated 31-7-1980 after the appellant had superannuated on 31-3-2008. We direct that 10% of the pension amount which had been withheld after superannuation on 31-3-2008 till 19-7-2012 is liable to be paid to the appellant within a period of 12 weeks from the date of this judgment.

27. After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19-7-2012, the State is empowered to legally withhold 10% of the pension amount of the appellant, till the criminal proceedings in RC Case No. 48-A of 1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19-7-2012 subject to the outcome of the criminal proceedings.

28. 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. 19-7-2012, it is



clear that gratuity also could not have been withheld under administrative Circulars dated 22-8-1974 and 31-10-1974, and Government Resolution No. 3104 dated 31-7-1980.

29. 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 RC Case No. 48-A of 1996.

30. The civil appeals are allowed in the aforesaid terms. All pending applications, if any, are accordingly disposed of. Ordered accordingly.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the petitioner has already been paid the entire admissible outstanding retiral dues, except the amount of 10% pension and 10% gratuity, which in any view of the matter is not payable to the petitioner at the moment, in view of the pendency of the criminal/ judicial proceeding, as aforesaid. As far as the grievance of the petitioner regarding non-payment of the outstanding salary for the period 25.12.2010 to 31.01.2012 (i.e. the suspension period) is concerned, the petitioner is granted liberty to approach the respondent no. 2 i.e. the Principal Secretary, Department of Health, Government of Bihar, Patna for redressal of his said grievance and in case a representation is filed by the petitioner in this regard, the respondent no. 2 shall consider the same on merits and pass a reasoned and a speaking order, in accordance with law, within a period of 12 weeks of



filing of such representation by the petitioner.

9. The present writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.08.2020
Transmission Date	NA

