

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22206 of 2019

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Choudhary Avinash Prasad Sinha Son of Late Ram Janam Choudhary,
Resident of Village-Khairahi, P.S.-Bikramganj, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Sdditional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Bihar, Patna.
4. The District Education Officer, Rohtas
5. The District Programme Officer (Establishment), Rohtas, Sasaram.
6. The Block Education Officer, Bikramganj, Rohtas.
7. The Headmaster, Primary School, Rauni, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Narayan Singh Mr.Prabhat Ranjan Singh
For the Respondent/s	:	Mr.Madhaw Prasad Yadaw (GP-23)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 09-01-2020 An order passed by the District Programme Officer (Establishment), Rohtas dated 01.11.2018, whereby the petitioner's pension and gratuity as well as cash equivalent to unutilized earned leave has been withheld is under challenge in the present writ application.

2. The petitioner was working as an Assistant Teacher when a criminal case was lodged against him, alleging commission of offence punishable under Sections 302/34 of the Indian Penal Code. He was convicted by the trial Court by



judgment and order dated 27.07.1987, which was affirmed by this Court by an order dated 18.07.2001. These facts are admitted.

3. Learned counsel appearing on behalf of the petitioner has submitted that for withholding full pension and gratuity some proceeding in compliance of Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules') was required to be initiated. He has submitted that this is an admitted fact that no proceeding at all was initiated under Rule 43(b) of the Rules.

4. A counter affidavit has been filed on behalf of the State stating therein that Rule 43(b) of the Rules empowers the State Government to withhold or withdraw a pension or in part thereof, permanently or for a fixed period, if an employee is found in departmental or judicial proceeding to have been guilty of grave misconduct, or to have caused pecuniary loss to the State Government by misconduct and negligence, during his service. It has been stated that conviction of the petitioner has been upheld by the Supreme Court also.

5. Rule 43(b) of the Rules reads thus:-

“43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or



any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.”

6. It is clear from the language of Rule 43(b) of the Rules that the State Government can withhold or withdraw a pension or any part of it in following circumstances:-

(i) If the petitioner is found in a departmental proceeding to have been guilty of grave misconduct.

(ii) If the pensioner is found in a judicial proceeding to have been guilty of grave misconduct and

(iii) If the pensioner is found to have caused pecuniary loss to the State Government by misconduct or negligence, during his service.

7. It is, thus, evident from the said Rule that if a pensioner has been held to be guilty of grave misconduct in a judicial proceeding, no departmental proceeding in exercise of



power under Rule 43(b) of the Rules will be required as the finding in the judicial proceeding can itself be the basis for exercise of the said power.

8. Since the petitioner has been held guilty of the commission of the offence punishable under Section 302 of the Indian Penal Code, which has been affirmed up to the Supreme Court, the decision to withhold pension/gratuity does not require interference in the present proceeding.

9. The said Rule, however, does not empower the State to withhold cash equivalent to unutilized earned leave. The impugned order to the said extent requires interference.

10. The impugned order stands modified accordingly to the extent that it shall be confined to withholding of pension and gratuity only.

11. This writ application is disposed of accordingly with a direction to the respondents to ensure payment of cash equivalent to unutilized earned leave, if due, within a period of two months from the date of receipt/production of a copy of this order.

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(Chakradhari Sharan Singh, J)

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