

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6252 of 2019

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Arjun Prasad Son of Ram Chandra Ram, Resident of Mohalla- Rampur Bhikari Near Bal Bharti School, Police Station- Munger, District- Munger, at present Ramji Chak, Nach Bagicha, Police Station- Digha, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Transport, Government of Bihar, Patna.
2. The State Transport Commissioner, Transport Department, Government of Bihar, Patna.
3. The Additional Transport Commissioner, Transport Department, Government of Bihar, Patna.
4. The Deputy Transport Commissioner-Transport Department, Government of Bihar, Patna.
5. The Under Secretary, Transport Department, Government of Bihar, Patna.
6. The Special Work Officer, Bihar Transport Department, Government of Bihar, Patna.
7. The Additional Secretary, Transport Department, Bihar, Patna.
8. The Additional Transport Commissioner, Bihar, Patna.
9. The Deputy Secretary, Transport Department, Bihar, Patna.
10. The Accountant General, Government of Bihar, Patna.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Bipin Kumar
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 21-01-2021

Heard learned counsel for the parties.

The petitioner has approached this Court for a

direction to the respondents to pay to him all the post retiral



benefits to which he is entitled, such as earned leave, group insurance, gratuity, salary increment, G.P.F. and other benefits as also the interest on the same.

The petitioner, who was working as Enforcement Sub Inspector at Patna was made accused in a criminal case vide Vigilance P.S. Case No. 13/2013 for the offences under Sections 13(2) read with 13(1)(E) of the Prevention of Corruption Act, 1988. For the involvement of the petitioner in the aforesaid case relating to accumulation of disproportionate assets, a departmental proceeding was initiated against him, in which, the petitioner was dismissed from service on 25.10.2013.

The aforesaid order of the dismissal was challenged by the petitioner before the Minister of the department but that was also dismissed vide order dated 24.09.2018.

Learned counsel for the petitioner has submitted that none of his post-retiral dues have been made available to him.

His representations before the concerned



authorities have also fallen on deaf ears.

The counter affidavit on behalf of respondent nos. 1 to 6 indicates that the petitioner was asked by the Transport Department to make available the record information under form BTC -56 so that necessary order could be issued for payment of G.P.F. amount. It has also been intimated to this Court by the respondents that the Transport Department has sent the details given by the petitioner to the Provident Fund Directorate with a request for issuance of authority letter for payment of G.P.F. amount. An amount of Rs. 3,82,219 towards the G.P.F. amount of the petitioner has already been sanctioned and paid to the petitioner. The group insurance amount due to the petitioner for an amount of Rs. 1, 58, 871/- has also been approved and paid to him.

Since the petitioner has been dismissed from the service and a criminal case is pending against him, he cannot claim the pension as a matter of right in view of Section 43 and 46 of the Bihar Pension Rules. Since gratuity is also part of pension, the answering respondents have stated that



the same is not payable to him.

So far as leave encashment is concerned, in accordance with the Circular No. 4564 dated 06.07.1993 of the Finance Department, the payment of whole of leave encashment or any part thereof can be withheld by the competent authority in case of any departmental proceeding or criminal offence or judicial investigation pending final order or judgment or there is any possibility of recovery.

Learned counsel for the petitioner, however, submits that since the criminal case against him is pending, the entire pension cannot be withheld.

The aforesaid argument is not tenable in as much as Section 43 and 46 of the Bihar Pension Rules do provide withholding of whole or part of the pension of an employee.

Future good conduct is an implied condition of every grant of pension and the Government has a right of withholding or withdrawing a pension or any part of it if the pensioner is convicted of serious crime or is guilty of grave misconduct.



Learned counsel for the petitioner has submitted that a direction be given to the concerned respondent for disposing of his representation in the light of the Judgment of Hon'ble Supreme Court in **Dr. Hira Lal vs. State of Bihar and Others, (2020) 4 SCC 346.**

The aforesaid case does not apply to the facts of the case of the petitioner. Since the petitioner has already been dismissed from service, a decision to withhold or withdraw the pension is justifiable. However, there has to be an order with reasons for withholding the entire pension and gratuity. The same has not been brought on record by way of counter affidavit but it has only been stated that except for pension or gratuity, all other dues have been paid to the petitioner. The leave encashment has provisionally been withheld as there are chances that the employer might have to go for the recovery of certain amount from the petitioner.

Learned counsel for the petitioner has submitted that there are other dues, which yet have not been cleared.

Considering the circumstances and the facts of this case, this Court disposes of this writ petition with a



direction to the petitioner to make a suitable representation to the Transport Commissioner, Govt. of Bihar, Patna within a period of eight weeks indicating in detail any amount which is due under any one of the heads of the post retiral benefits and the respondent no. 2 on receipt of that representation, shall have the facts verified and shall pass necessary orders in accordance with law within a further period of eight weeks.

Needless to state that the order passed by the respondent no. 2 shall be a speaking order and the same shall be communicated to the petitioner forthwith. If any amount is found to be due to the petitioner, that ought to be paid to him at the earliest.

The writ petition stands disposed of.

(Ashutosh Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.02.2021
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