

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8021 of 2019

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Sushil Kumar Dutta, Son of Sidheshwar Singh, Resident of Village-
Gadachak, P.S.- Parwalpur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar. Bihar.
2. The Principal Secretary, Art Culture and Youth Department, Government of Bihar, Patna.
3. The Director, Student and Youth Welfare, Art Culture and Youth Department, Government of Bihar, Patna.
4. The Superintendent, Physical Education, Magadh Division, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mr. Ranjay Kumar Singh
For the Respondent/s	:	Mr. Anant Prasad Singh (SC-15)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 06-08-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard Mr. Tej Bahadur Singh, learned senior counsel for the petitioner and the learned counsel appearing on behalf of the State.

3. The petitioner was worked as Clerk under the Department of Art Culture and Youth and at the relevant point of time, posted at Gaya. There does not appear to be any dispute about the fact that his actual date of birth is 12.06.1956. It is alleged by the Department that by interpolation in the service book the date of birth was altered to 12.06.1958 with



12.06.1956 as the petitioner's date of birth he would have been retired on 30.06.2016 on attaining the age of superannuation. The petitioner, however, continued beyond the date of his actual retirement in service on the basis of altered date of birth in the service book, which was subsequently detected in February, 2017.

4. On the allegation of commission of fraud and interpolation in the petitioner's service book, an FIR has been registered as Civil Lines P.S. Case No. 311 of 2018 for the offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code. The criminal case is pending for trial.

5. The petitioner has approached this Court seeking quashing of communication dated 29.10.2018 issued by the Superintendent, Physical Education, Magadh Division, Gaya, whereby recovery of a sum of Rs. 3,93,924/- has been ordered on the basis that the petitioner continued by act of fraud to work in the Department beyond the date of his retirement from 01.07.2016 to February, 2017.

6. The petitioner has also a grievance that he has not been paid any post retiral benefits, for no reason at all, despite the fact that no proceeding has been initiated against the petitioner under Rule 43(b) of the Bihar Pension Rules, 1950.



7. Mr. Tej Bahadur Singh, learned Senior counsel appearing on behalf of the petitioner has relied on a Supreme Court's decision in case of *State of Bihar Vs. Narasimha Sundram* reported in *1994 Supp (3) SCC 705* to contend that as the Department has not chosen to initiate any departmental inquiry under the provisions of the Bihar Pension Rules, the emoluments paid to the petitioner during the period he continued admittedly after the date of retirement, cannot be recovered. He has further submitted that merely on the ground of pendency of criminal case, entire pensionary benefits cannot be withheld and at the maximum, in view of the provisions under the Bihar Pension Rules, the State can withhold 10% of pension and gratuity during the pendency of the criminal case. He has further submitted that the petitioner has not been paid the amount of leave encashment, group insurance and general provident fund.

8. I find force in the submission made on behalf of the petitioner while placing reliance on a Supreme Court's decision in case of *State of Bihar Vs. Narasimha Sundram* (supra). This is admitted fact that though the respondents had the jurisdiction to initiate departmental enquiry as contemplated under Rule 43(b) of the Bihar Pension Rules, 1950, they chose



not to proceed against the petitioner.

9. In such circumstance, the impugned order dated 29.10.2018 issued by the Superintendent, Physical Education, Magadh Division, Gaya deserves to be set aside and is, accordingly, set aside.

10. There is no explanation coming fourth from the respondents State of Bihar as to why general provident fund amount, group insurance amount and cash equivalent to earned leave have not been paid to the petitioner. The respondents are directed to ensure that amounts against the said heads are paid to him within a period of two months from the date of receipt/production of a copy of this order.

11. It is observed that the period in service after the petitioner attained the age of superannuation shall not be taken into account for the purpose of determination of leave encashment though he shall be entitled to such determination on the basis of his service rendered prior to the said date.

12. Mr. Tej Bahadur Singh, learned senior counsel, has drawn my attention to a Full Bench decision of this Court in case of *Arvind Kumar Singh Vs. State of Bihar and ors*, reported in **2018 (2) PLJR 933** to contend that in any case the petitioner is entitled for 90% of pension and 90% of gratuity.



13. Considering the aforesaid and the law laid down by a full Bench of this Court in case of *Arvind Kumar Singh* (supra), the respondents are directed to ensure that petitioner starts getting 90% pension and 90% gratuity within a period of two months from the date of receipt/production of a copy of this order.

14. This writ application is allowed with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J)

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