

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14322 of 2019

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Sujit Kumar Roy Son of Late Ramesh chandra Roy, Resident of Mohalla-
Vivek Vihar Colony, Road No. 1 Hanuman Nagar, P.S.- Patrakar Nagar,
District- Patna.

... .. Petitioner

Versus

1. The State of Bihar Through the Chief Secretary, government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
5. The Deputy Secretary, The Labour Resources Department, Government of Bihar, Patna.
6. The Director, General Provident Fund, Bihar, Patna.
7. The Treasury Officer, Vikash Bhawan, Government of Bihar, Patna.
8. The Accountant General, Bihar.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Chitranjan Sinha (Sr. Advocate)
	:	Mr.Puneet Siddhartha
For the Respondents	:	Mr.Anil Kumar Singh (GP 26)
	:	Mr.Bindhyachal Rai

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 05-07-2021 This matter has been taken up for hearing online
because of COVID-19 pandemic restrictions.

The petitioner has challenged a resolution issued
vide Memo No. 1177 dated 24.05.2019 issued under the
signature of the Deputy Secretary, Labour Resources
Department, Government of Bihar whereby and whereunder a
disciplinary proceeding against the petitioner under Rule 43 (b)



read with Rule 139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules') is proposed to be held on the allegation of certain misconduct said to have been committed by the petitioner when he was posted as Deputy Labour Commissioner, Darbhanga. The petitioner superannuated w.e.f. 31.12.2018.

Mr. Chitranjan Sinha, learned Senior counsel appearing on behalf of the petitioner has submitted that the impugned decision of the State Government to initiate proceeding under Rule 43 (b) of the Rules relates also to some of the allegations pertaining to period beyond four years from the date of decision to initiate departmental proceeding. He has accordingly submitted that there being specific bar under Section 43(b) of the Rules, the petitioner could not have been proceeded against for such transactions which were beyond four years from the date of initiation of departmental proceeding. He has further submitted that even otherwise, the charges are vague and as a matter of fact no misconduct warranting initiation of proceeding under Rule 43(b) is made out in the absence of any allegation of any financial loss caused to the State Government which could be a justifiable reason for initiation of proceeding against the petitioner under the said rule.



It is, however, admitted that some of the charges against the petitioner for initiation of proceeding under Rule 43(b) of the Rules relate to transactions within four years from the date of initiation of the said proceeding. There is no dispute that an enquiring authority has been appointed and some of witnesses have already been examined before the enquiring authority in the said proceeding under Rule 43 (b) of the Rules.

Mr. Sinha has submitted that so far no material has come in the proceeding before the enquiring authority to justify action against the petitioner. He has also argued that the respondents have withheld full gratuity during the pendency of the proceeding which could not have been done in view of authoritative pronouncement by a full Bench of this Court in case of *Arvind Kumar Singh v. State of Bihar* reported in **2018 (2) P.L.J.R. 933**. He has also relied on a co-ordinate Bench decision of this Court in case of *Dr. Aquil Ahmed v. State of Bihar* reported in **2021 (1) P.L.J.R. 293** in support of the contention that gratuity cannot be withheld. He has argued that even Rule 43 (d) could not have been invoked by the respondents to withhold the amount of gratuity which can be done only when a proceeding is found to be pending on the date of retirement of a government servant.



In my opinion, since there is substantial progress in the enquiry initiated against the petitioner under Rule 43(b) of the Rules, for the present no interference of this Court with the said proceeding is warranted under Article 226 of the Constitution of India. Some of the witnesses have already been examined. However, the Court cannot lose sight of the fact that the proceeding was initiated on 24.05.2019. The respondents cannot be permitted to keep the matter pending indefinitely which has the consequence of denying the petitioner his pensionary benefits. The Court accordingly directs the respondents to ensure that a final decision is taken on the enquiry being conducted under Rule 43(b) of the Rules within a period of three months from the date of receipt/production of a copy of this order. If the proceeding is not concluded within three months, the same shall be treated to have terminated and the petitioner shall be thereafter entitled to receive his admissible pension and other post retiral benefits. It goes without saying that the petitioner shall cooperate in conclusion of the proceeding under Rule 43 (b) of the Rules and shall not seek unnecessary adjournments. In case the petitioner is found wanting in this regard expeditious conclusion of the enquiry, the enquiring authority shall be at liberty to proceed and submit



his report and the competent authority to pass final order.

I find force in submission made on behalf of the petitioner in the light of Full Bench decision in case of *Arvind Kumar Singh* (supra) that the respondents could not have withheld the admissible amount of gratuity payable to the petitioner. The respondents are accordingly directed to pay to the petitioner, the amount of gratuity within a period of two months from the date of receipt/production of a copy of this order.

This application is accordingly partly allowed with the aforesaid observation and direction.

It goes without saying that I have not gone into the grounds taken in the writ application to question the legality of initiation of departmental proceeding and other materials brought on record to contend that charges against the petitioner cannot be justified. It will be open for the petitioner to raise all such points before the appropriate authority at appropriate stage.

(Chakradhari Sharan Singh, J)

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