

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2411 of 2021

Kailash Ray Son of Late Saukhi Ray, Resident of Village - Bhusahi, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur, the retired Panchayat Secretary, Gram Panchayat Raj, Sohagpur Khutahi, Block - Paroo, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. The District Magistrate, Muzaffarpur, District - Muzaffarpur.
4. The Treasury Officer, Muzaffarpur, District - Muzaffarpur.
5. The District Provident Fund Officer, Muzaffarpur, District - Muzaffarpur.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar Manglam
For the Respondent/s	:	Mr. Vinay Kirti Singh, GA 2
		Mr. Binay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 02-11-2021 Heard Mr. S.B.K. Manglam, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned Govt. Advocate-2 along with Mr. Binay Pandey, learned counsel for the State.

2. Petitioner has preferred the present writ application for payment of post retiral dues pursuant to his retirement from the post of Panchayat Secretary on 31/08/2016. The petitioner has claimed payment of the following:-

- (i) Pension
- (ii) Death -cum- Retirement Gratuity
- (iii) Leave Encashment; and
- (iv) Provident Fund

3. Learned counsel for the petitioner submits that on the date of retirement no departmental and / or criminal



proceeding was pending against the petitioner and despite the fact that petitioner retired in the year 2016 no retiral benefits have been paid to the petitioner by the authorities for the reasons best known to them. Learned counsel further submits that memo of charge was served upon the petitioner after four years of his retirement on 17/06/2020 and petitioner has already submitted his reply before the Conducting Officer. Accordingly, it has been submitted by learned counsel for the petitioner that in view of the provisions as contained in Rule 43 (c) of the Bihar Pension Rules the respondent authorities cannot withhold payment of retiral benefits of the petitioner.

4. On the other hand, Mr. Pandey, learned counsel for the State submits that amount towards gratuity has already been paid to the petitioner. He further submits that while the petitioner was in service, Mukhiya of concerned Gram Panchayat- Raj Chakki, Sohagpur, Block- Paroo, District – Muzaffarpur made a written complaint against the petitioner and former Mukhiya alleging therein that they have fraudulently withdrawn money of various Government schemes for the financial year 2011-12 to 2015-16 without doing any work and in view of the aforesaid complaint on 24/05/2018 प्रपत्र 'क' (memo of charge) was drawn against the petitioner and decision



was taken to initiate departmental proceeding against him by the District Magistrate, Muzaffarpur vide order contained in memo no. 2227 dated 15-11-2018.

5. In reply, learned counsel for the petitioner submits that the petitioner has come to know about initiation of departmental proceeding against him for the first time on 17-06-2020 when memo of charge vide प्रपत्र 'क' was served upon the petitioner by the respondent authority.

6. After having heard learned counsel for the parties and carefully going through the materials available on record, I come to the conclusion that admittedly on the date of retirement no departmental and / or criminal proceeding was pending against the petitioner. The FIR was lodged against the petitioner on 02/01/2018 and memo of charge was served upon him on 17-06-2020 and as such this much is clear that on the date of retirement no departmental and / or criminal proceeding was pending against the petitioner. Rule 43 (c) was incorporated in the Bihar Pension Rules with effect from 19th July, 2012, 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 percent).

This will come into force with immediate effect.”

7. In view of the fact that no departmental and / or criminal proceeding was pending against the petitioner on the date of retirement, in my opinion the action of the respondent authorities of withholding the pension and other retiral dues of the petitioner is not sustainable in law.

8. Accordingly, I direct the respondent nos. 3, 4, 5 & 6 to ensure payment of retiral dues of the petitioner within a period of sixty days from the date of receipt / production of a copy of this order.

9. With the aforesaid observation and direction, this writ petition is disposed of.

(Anil Kumar Sinha, J)

praful/-

U			
---	--	--	--

