

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3824 of 2021**

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Sudhir Kumar Sinha son of Late Chhatradhari Prasad Singh resident of A/8, Ashokpuri Colony, Khajpura, Bailey Road, P.S.- Shastri Nagar, District-Patna- 800014.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Water Resources, Bihar, Patna.
3. The Deputy Secretary (Management Cell), Department of Water Resources, Bihar, Patna.
4. The Accountant General of Bihar, Veer Chand Patel Path, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Prabhu Nath Pathak, Advocate  
For the Respondent/s : Mr.Harish Kumar, GP 8

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL JUDGMENT**

**Date : 01-11-2021**

Heard Mr. Prabhu Nath Pathak, learned counsel for the petitioner and Mr. Harish Kumar, learned Government Pleader-8 for the State.

2. The petitioner has filed the present writ application for a direction to the respondent authorities to pay 10% pension and 10% gratuity to the petitioner, which has wrongly been withheld by the State.

3. Learned counsel for the petitioner submits that petitioner retired from the post of Executive Engineer, Flood Control Division, Samastipur, Water Resources Department and at the time of retirement no departmental and / or any criminal



proceeding was pending against the petitioner. He further submits that 90% pension and gratuity was paid to the petitioner after retirement, however, without any departmental proceeding and / or any order passed by the respondent authority, 10% pension and gratuity has been withheld arbitrarily.

4. On the other hand, learned counsel for the State submits that at the given point of time the petitioner was posted as Executive Engineer and was also in the capacity of Drawing and Disbursing Officer. While discharging the duty of Drawing and Disbursing Officer during the period 2014-18 the petitioner deducted TDS amount from the employees, contractors and others and the deductions made by the petitioner were not deposited regularly in the account of the Central Government (i.e. with the Income Tax Department) due to which a fine of Rs. 11,13,571/- has been imposed by the Income Tax Department. He further submits that vide Annexures- C, D and other letters annexed along with the counter affidavit the petitioner was called upon to deposit the sum of Rs. 11,13,571/- before the Income Tax Department.

5. In reply, learned counsel for the petitioner submits that in response to the letter dated 19-06-2019 bearing no. 462 and other letters issued by the Department the petitioner submitted his reply vide letter dated 31.08.2019 specifically stating therein that



quarterly statement relating to the deductions made by the petitioner from the salary of the employees as well as from the bills of the contractors were being prepared and submitted before the controlling authority by the petitioner regularly but upon the reply submitted by the petitioner no further proceeding and / or enquiry was conducted by the Department and as such, the action of the respondent authority withholding 10% pension and 10% gratuity without holding any enquiry and / or initiating any proceeding is completely *malafide*, arbitrary, unreasonable and fully without jurisdiction.

6. I have heard learned counsel for the parties and have gone through the materials available on record. It appears that petitioner retired on 31.03.2018 and on the date of retirement admittedly no departmental and / or criminal proceeding was pending against the petitioner, and as such, the action of the respondent authorities was not justified in view of Rule 43(c) of the Bihar Pension Rules as introduced / incorporated in the Bihar Pension Rules by way of amendment brought into force with effect from 19<sup>th</sup> July, 2012. Rule 43 (c) of the Bihar Pension Rules is reproduced hereinbelow for ready reference:

“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. Since in the present matter no departmental proceeding and / or criminal case was pending against the petitioner on the date of retirement, I am of the opinion that the action of the respondent authorities in withholding 10% pension and 10% gratuity of the petitioner is not tenable in law, and as such, the respondents are directed to issue sanction order for release of 10% pension as well as 10% gratuity to the petitioner within a period of two months from the date of receipt / production of a copy of this order.

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

**(Anil Kumar Sinha, J)**

praful/-

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