

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11453 of 2021

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Harishankar Ranjan son of Late Munnilal Ram resident of Village and Post -
Chhata, P.S. - Chhata, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Panchayat Raj Patna,
Bihar.
2. The District Magistrate, Siwan.
3. The District Panchayati Raj Officer, Siwan.
4. The Sub-Divisional Officer, Siwan.
5. The Block Development Officer, Barharia, Siwan.
6. The Block Development Officer, Hasanpura, Siwan.
7. The Senior Treasury Officer, Siwan.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar, Advocate.
For the Respondent/s : Mr. Kumar Alok (SC-7)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 15-11-2022 Heard Mr. Alok Kumar, learned counsel for the
petitioner and Mr. Kumar Alok, learned SC-7 for the State.

The present application has been filed seeking a
direction upon the respondents to ensure the payment of the
retiral benefits to the petitioner including pension and GPF with
up to date statutory interest as well as commutation of pension.

The short facts leading to the filing of the present
application is that the petitioner superannuated from the post of
Panchayat Secretary on 31.05.2019 while working in the Block
Office, Hasanpura, Siwan. It is submitted that after the



retirement of the petitioner, he filed all the necessary pension papers and other requisite documents for his retiral benefits and accordingly, the amount under the head of Group Insurance, Leave Encashment and Gratuity have stood paid, however, till date the amount of GPF and the pension has not been paid to him resulted into filing of the present application.

On the other hand, Mr. Kumar Alok, learned SC-7 for the State by referring to the statements made in the counter affidavit submitted that on account of certain charges of financial irregularity in purchase of solar lights, the petitioner was put under departmental proceeding and as the proceeding could not be concluded, the same has been converted under Rule 43 (b) of the Bihar Pension Rules, 1950 vide memo no. 913-II dated 22.07.2020 and the same is still pending. He further submitted that all the other retiral benefits, except pension and GPF have stood paid just after his retirement.

At this juncture, learned counsel for the petitioner further submitted that while the petitioner was posted in Gram Panchayat, Nawalpur under Block Barharia, he was placed under suspension in the year 2007 and put to departmental proceeding, however, as the departmental proceeding could not be concluded, his suspension was revoked vide memo no. 08



dated 02.01.2009 but the departmental proceeding remain continued till date even at the time of his superannuation i.e. on 31.05.2019.

It is needless to say that Rule 43 (b) confers right upon the State Government to withhold pension or any part of it, which would include Gratuity in terms of Rule 27, if an employee is found guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service or on re-employment after his retirement. However, after coming into force of amendment to the Bihar Pension Rules by incorporating Rule 43(c) on 19th July, 2012, an employee, who is facing departmental inquiry or judicial proceeding on the date of his superannuation would be entitled to provisional pension, which would include Gratuity to the tune of an amount not less than 90%. The issue with regard to the entitlement of a Government employee, who is facing departmental inquiry or judicial proceeding, on the date of his superannuation, has also set at rest by the learned Full Bench of this Hon'ble Court in the case of Arvind Kumar Singh vs The State of Bihar & Ors. reported in 2018 (II) PLJR 933.

While parting with this order, this court is also conscious of the amendment brought in the Bihar Pension Rule



by incorporating Rule 43(d), which empowers the State Government to withhold full amount of gratuity till the final conclusion of the departmental or judicial proceeding, if the same is pending against the Government servant at the time of retirement.

However, from the averments made in the writ application and the counter affidavit, it appears that the amount of gratuity has already stood paid to the petitioner after his retirement. Further, from the facts of the case, it is also evident that the departmental proceeding is pending for the last fourteen years and when the departmental proceeding could not be concluded at the time of superannuation of the petitioner, the same has been converted under Rule 43(b).

This court further finds that the learned counsel for the State has not been able to cite any rule, which would entitle the respondents to withhold the GPF (employees contribution), even if in a case where he is facing departmental inquiry or judicial proceeding at the time of his superannuation. That being so in the opinion of this court, retaining the GPF amount is not permissible on the pretext of pendency of the departmental proceeding.

In view of the aforesaid circumstances and the settled



proposition of law, the writ application stands disposed of with a direction to the respondent no. 2 to consider the claim of the petitioner for grant of Pension in terms of Rule 43 (c) of the Bihar Pension Rule, 1950 and in view of the law laid down by the learned Full Bench of this Hon'ble Court rendered in the case of Arvind Kumar Singh Vs. State of Bihar & Ors. (supra) preferably within a period of eight weeks from the date of receipt/production of a copy of this order. It is also directed that within the stipulated period, the respondent no. 2 shall also consider the claim of the petitioner for payment of his GPF amount and pass necessary order.

It is made clear that in case, the claim of the petitioner finds favour, actual benefits must be accrued to him within the aforesaid period, failing which appropriate order would be passed against the erring officials.

(Harish Kumar, J)

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