

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11497 of 2021

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Jitendra Prasad Son of Late Sadhu Sharan Prasad Resident of Flat No. D/222,
Jyotipuram Apartment, Jagdeo Path More, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Secretary, Rural Works Department, Bihar, Patna.
3. The Additional Secretary, Rural Works Department, Bihar, Patna.
4. The Deputy Secretary, Rural Works Department, Bihar, Patna.
5. The Officer-on-Special Duty, Rural Works Department, Bihar, Patna.
6. The Under Secretary, Rural Works Department, Bihar, Patna.
7. 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. Kumar Alok, SC-7

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 13-12-2022 Heard Mr. Prabhu Nath Pathak, learned counsel for

the petitioner and Mr. Kumar Alok, learned Standing Counsel -7

for the State.

The present writ application has been filed invoking
the extraordinary jurisdiction of this court seeking a direction to
grant 10% of pension, 100% of gratuity and leave encashment
for 300 days, which has not been paid on account of pendency
of the departmental proceeding.

It is submitted that the petitioner was appointed as an
Assistant Engineer on 10.06.1988 and having found eligible, he
was promoted to the post of Executive Engineer on 12.08.2016



in Rural Works Department, Bihar, Patna and finally he superannuated on 30.09.2019. It is further submitted that during his service period, the petitioner was put under departmental proceeding, which was ultimately culminated with the punishment of withholding of 5% of pension for two years. It is next submitted that with regard to some other charges, a memo of charge has been framed against the petitioner way back on 18.08.2017 but till date neither the inquiry is conducted by the inquiry officer nor any inquiry report has been submitted and as such, withholding of any retiral benefits is not justified.

A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the respondents no. 2 to 6. Learned standing counsel appearing on behalf of the State submits that admittedly charge was framed against the petitioner way back in the year 2017.

He next submits that the date on which the charge has been framed it shall be deemed that the departmental proceeding has been initiated as such in view of Rule 43(c) of the Bihar Pension Rule, 1950, as incorporated on 19th July, 2012, the petitioner has been accorded 90% of pension as well as 90% of gratuity. It is next submitted that the issue involved in the present writ application has already been set at rest by the



learned Full Bench of this Court in the Case of **Arvind Kumar Singh Vs. State of Bihar and Ors. Reported in 2018 (2) PLJR 933** and in terms of mandate of the learned Full Bench of this Court, the leave encashment of the petitioner has been withheld and the action of the respondent is in conformity with the Rule 43(c) and the mandate of the learned Full Bench.

At this juncture, learned counsel for the petitioner submits that during the pendency of this writ application, the petitioner has been inflicted with the punishment of withholding of 5% of pension for two years and there is a memo of charge against the petitioner, he seeks liberty to assail the punishment order as well as memo of charge by filing a fresh writ application.

In view of the prayer made on behalf of the learned counsel for the petitioner, the present writ application stands disposed of with the liberty aforesaid.

(Harish Kumar, J)

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