

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12378 of 2021

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Ajoy Kumar Sinha s/o Sri Basudeo Sinha resident of 302, Dayal Niketan,
Tilak Marg, North Sri Krishna Puri, PS SK Puri, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Accountant General, Bihar Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Kant Chaudhary, Advocate
For the Respondent/s : Mr. Arvind Ujjwal (SC-4)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 13-12-2022 Heard Mr. Birendra Kant Chaudhary, learned counsel

for the petitioner and Mr. Arvind Ujjwal, learned SC-4 for the

State.

The present writ petition has been filed seeking
direction upon the respondents to sanction and ensure the
payment of full gratuity, leave encashment and remaining 10%
of pension that has been withheld on account of pendency of
departmental proceeding.

It is contended on behalf of the learned counsel for the
petitioner that the petitioner joined the Public Health
Engineering Department, Government of Bihar as Assistant
Engineer way back in the year 1987. Just before few days of his
superannuation, vide memo no. 851 dated 17.06.2020, a



departmental proceeding was directed to be initiated under Rule 17(2) of Bihar Government Servant Classification, Control & Appeal Rules 2005, hereinafter referred to as CCA Rule , 2005. During the pendency of the said departmental proceeding, the petitioner superannuated on 30.06.2020. The petitioner being aggrieved assailed the Resolution dated 17.06.2020 whereby, a departmental proceeding was initiated under Rule 17(2) of CCA Rule 2005 by filing CWJC No. 7332 of 2020. The Hon'ble court having considered the matter has been pleased to allow the writ petition vide order dated 04.01.2021 and quashed the impugned Resolution dated 17.06.2020. He further submits that admittedly, after quashing of the departmental proceeding initiated vide Resolution dated 17.06.2020, there had not been any departmental proceeding pending against the petitioner after 04.01.2021. He further submits that by the time, the petitioner would be allowed, the benefit of remaining retiral dues, the respondent authorities again came out with another memo of charge on 01.07.2021 vide Resolution No. 792 with respect to some alleged financial irregularities which is said to have taken place in the year 2007. He next contended that admittedly, after quashing of the earlier Resolution dated 17.06.2020 on 04.01.2021, there was no departmental proceeding and the



departmental proceeding, if any, the same has been initiated on 01.07.2021. He further submitted that once the departmental proceeding initiated vide impugned Resolution dated 17.06.2020 having been quashed. The petitioner accrued a right to get all the retiral benefits and that cannot be divested by the subsequent events, that too by issuing a fresh resolution for initiating another departmental proceeding with regard to an occurrence which took place way back in the year 2007 itself.

Per Contra, learned counsel for the State vehemently confronted the submission made on behalf of the learned counsel for the petitioner and submits that admittedly, at present the petitioner is facing a departmental proceeding and the same is at the fag-end, as the second show cause notice has been served upon the petitioner. He next submits that against the order dated 04.01.2021 passed in CWJC No. 7332 of 2020 the State of Bihar has preferred L.P.A No. 522 of 2021 which is pending before the Hon'ble Court for final adjudication. He also submits that the petitioner has already been paid 90% of pension and other retiral benefits and the remaining payment shall be made after disposal of the departmental proceeding or the letters Patent Appeal.

Having heard the learned counsel for the parties and



considering the materials available on the record, this Court finds substance in the submission made on behalf of the learned counsel for the petitioner that on being setting aside of the Resolution dated 17.06.2020 vide order dated 04.01.2021, passed by this Court in CWJC No. 7332 of 2020, there was no departmental proceeding and as such withholding of any of the amount of retiral dues/benefit was without any authority of law and as such the petitioner is justified in claiming his payment of full gratuity, leave encashment and remaining 10% of pension. It would also be relevant to observe here that the action of the respondent is also not justified for the reason that though the State respondent has preferred L.P.A No. 522 of 2021 but there is no interim stay of the operation of the order dated 04.01.2021 passed in CWJC No. 7332.

It is needless to say that after 04.01.2021, as there was nothing against the petitioner, the respondent authorities would be obliged to ensure the payment of remaining retiral dues which had been withheld on the ground of pendency of the departmental proceeding, that has already set at naught by the Hon'ble Court and now any subsequent event cannot make further eclipse on the right of the petitioner.

In any view of the matter, this writ petition stands



disposed of with direction to the respondent no. 2 to ensure the payment of remaining gratuity, leave encashment and remaining 10 % of pension subject to the final out come of the LPA No. 522 of 2021 which is pending consideration before the Hon'ble Court.

It is needless to say that the respondent authorities will ensure the remaining payment of retiral dues within a period of six weeks from the date of receipt/ production of a copy of this order.

(Harish Kumar, J)

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