

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.978 of 2020

Shiv Pujan Pandey, son of Late Triveni Pandey, resident of village pandeypipra, P.O.- Shukulpipra, Police Station- Mohania, District- Kaimur Bhabua (Retired Head master from Middle School, Vishnupura Block- Mohania, Police Station- Mohania, District - Kaimur, Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Bihar, Patna.
3. The Principal Secretary, Education Department, New Secretariat, Bailey Road, Patna.
4. The Director Primary Education, New Secretariat, Bailey Road, Patna.
5. The Accountant General, Bihar, Patna.
6. The Collector, Kaimur, Bhabua.
7. The District Programme Officer, Establishment, Kaimur, Bhabua.
8. The District Superintendent of Education-cum-Sub-Divisional Educational Officer, Kaimur at Bhabua.
9. The Block Education Officer, Mohania, Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate Mr. Chandra Shekhar Verma, Advocate
For the Respondent/s	:	Ms. Namrata Singh, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

10 28-11-2022 Heard Mr. Radha Mohan Pandey, learned counsel appearing on behalf of the petitioner, duly assisted by Mr. Chandra Shekhar Verma, learned counsel, and Ms. Namrata Singh, learned AC to GA-12, for the State.

2. By filing the instant writ petition, the petitioner is assailing the order dated 31.05.2019, issued by the District Programme Officer (Establishment), Kaimur, Bhabua by which



only 90% provisional pension amounting to Rs.30,600/- per month has been approved, subject to final outcome of the Chetganj, Varanasi P.S. Case No. 116 of 2003, pending before the Hon'ble Allahabad High Court.

3. During the pendency of the present writ petition, the petitioner filed an interlocutory application, bearing I.A. No. 1 of 2021 seeking a further prayer, in addition to the relief prayed for in the main writ petition for payment of gratuity to the petitioner.

4. The brief facts of this case is that the petitioner was appointed as Assistant Teacher on 10.11.1986 and after rendering more than 35 years of his service, he superannuated on 31.01.2019, as Headmaster of Middle School, Vishnupura, Mohania, District Bhabhua. Having been superannuated, the petitioner has been paid his retiral dues under the head of leave encashement, GPF and GIC.

5. The cause of action for invoking the extraordinary jurisdiction of this Court arose when Memo No. 182 (Estt.) dated 31.05.2019 came to be issued by the District Programme Officer (Establishment), Kaimur, Bhabua, whereby only 90% of the provisional pension was allowed and the rest of 10% withheld due to pendency of the criminal case.



6. It is submitted that while the petitioner was in service, Chetganj, Varanasi P.S. Case No. 116 of 2003 was instituted, and the petitioner was put under suspension and a departmental proceeding was initiated. However, later on, the order of suspension was revoked and he was allowed to discharge his duties till the date of his superannuation.

7. It is relevant to state here that Sessions Trial No. 481 of 2003, arising out of Chetganj, Varanasi P.S. Case No. 116 of 2003, has finally culminated into conviction of the petitioner vide judgment dated 26.02.2007 and he has been sentenced to life imprisonment, which is under challenge in Cr. Appeal No. 1754 of 2007 before the Hon'ble Allahabad High Court. It is further submitted that the petitioner has been granted two promotions by the department, irrespective of the pendency of the criminal case and, as such, the action of the department in granting promotion amounts to waiving the effect of stigma on the pretext of conviction in a criminal case, since the petitioner was allowed to join after his release on bail and further he superannuated unconditionally. He further submits that the departmental proceeding has never been come out with any final outcome nor the department has taken any decision to initiate a proceeding under Rule 43 (b) of the Bihar Pension Rules. He



further submits that the impugned order withholding of gratuity, is in complete defiance of the mandate of the settled legal proposition, as has been incorporated under Rule 43(c) of the Bihar Pension Rules, apart from the law laid down by the learned Full Bench of this Court in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors**, reported in **2018(2) PLJR 933**.

8. Learned counsel for the petitioner also relied upon one of the judgment rendered by the learned coordinate Bench of this Case in the case of **Ramesh Prasad Ranjan Vs. The State of Bihar & Ors.**, passed in CWJC No. 7842 of 2020

9. Per contra, learned counsel for the State vehemently confronted the submissions made on behalf of the learned counsel for the petitioner and by referring to the averments made in the counter affidavit filed on behalf of respondent no.7 submits that the State Government in exercise of power conferred under Article 309 of the Constitution of India has brought an amendment in Rule 43 of the Bihar Pension Rules, 1950 by incorporating Rule 43(d) and in terms of the newly added Rule, it has been provided that the State Government reserves a right to withhold amount of 100% gratuity, in case of pendency of either criminal or departmental



proceeding against the retired employee. He further submits that the petitioner has already convicted in S.T. No. 481 of 2003, arising out of Chetganj, Varanasi P.S. Case No. 116 of 2003, and criminal appeal is pending consideration before the Hon'ble Allahabad High Court and, as such, the claim of the petitioner for payment of remaining 10% of the pension and the gratuity is not sustainable.

10. Having heard the parties at length. The question involved in this writ petition is as to whether an employee, who is facing conviction, the date on which he superannuates, the State Government is empowered to withhold pension or gratuity?

11. In order to answer the aforesaid issue, it would be apt and proper to reproduce Rules 27 and 43 of the Bihar Pension Rules, 1950.

“27. Pension includes gratuity except the cases under rule 43(d).

43.(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension



under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and as such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be



made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

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).

43 (d) If any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly.

Provided that where Departmental proceedings has been instituted under Rule 19 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (As amended from time to time) for imposing minor penalties under the rule 14(i)(ii) and (v) of the



said rules, payment of gratuity may be made to the government servant.”

12. Rule 43(c) of the Pension Rules, was incorporated in the Bihar Pension Rules with effect from 19.07.2012 in the matter of fixation of pension provisionally to be paid where an employee facing departmental enquiry or judicial proceeding, the date on which he superannuated, whereas Rule 43 (d) of the Pension Rules made effective with effect from 21.01.2019, 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. It is needless to say that Rule 43(d) of the Pension Rules would be applicable to all the departmental or judicial proceeding, which is pending against the Government servant at the time of retirement and moreover, after making amendment in Section 27 of the Bihar Pension Rules, 1950. it has been clarified that the pension includes gratuity, except the case under Rule 43(d) of the Pension Rules.

13. This Court is also conscious of the fact that Rule 43(a) of the Pension Rules, governs the cases where the Provincial Government reserve to themselves the right of



withholding or withdrawing the pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. This Court is also conscious of the fact that the petitioner of the present case superannuated on 31.01.2019 from the post of headmaster, whereas the Rule 43(d) of the Pension Rules came into force with effect from 21.01.2019 itself and, as such, there is no iota of doubt regarding applicability of Rule 43(d) in case of the petitioner.

14. The cases relied upon by the learned counsel for the petitioner mainly governs the cases where the employees were facing departmental enquiry or judicial proceeding at the time of their superannuation and as such their cases are rightly governed by the law laid down by the learned Full Bench of this Court in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors** (supra). However, in the present case, on being found the charges proved, the petitioner had already been convicted way back in the year 2007 itself and in the opinion of this Court, the case of the petitioner would be dealt with Rule 43(a) and Rule 43(d) of the Bihar Pension Rules and, as such, this Court does not find any impropriety in the impugned order withholding 10% pension and entire gratuity subject to the final result of the appeal arising out of S.T. No. 481 of 2003, arising



out Chetganj, Varanasi P.S. Case No. 116 of 2003.

15. Having considered the facts and discussions made above, this Court does not find any merit in this writ petition. Accordingly, the present writ petition stands dismissed.

(Harish Kumar, J)

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