

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12830 of 2017**

Narmadeshwar Sharma son of Late Nandi Keshwar Sharma, Resident of Village- Bahilwara Govind, Post Office Bahilwara Govind, Police Station Saraiya, District Muzaffarpur at present address Narmadeshwar Sharma, Executive Engineer Ret. Salam- 7, Kankarbagh Colony, Police Station and Post Office Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary to Government of Bihar, Water Resources Department, Sinchai Building, Patna.
2. The Principal Secretary to Government, Minor Water Resources Department, New Secretariat Building,
3. The Additional Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road,
4. The Joint Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna
5. The Deputy Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna
6. The Under Secretary, Minor Water Resources Department, New Secretariat Building, Bailey Road, Patna
7. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

**Appearance :**

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| For the Petitioner/s        | : | Mr. Lalan Kumar Singh, Advocate |
| For the Respondent/s        | : | Mr. Vikash Kumar – SC-11        |
|                             |   | Mr. Sriram Krishna, AC to SC-11 |
| For the Accountant General: |   | Mr. Arun Kumar Arun, Advocate   |

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL ORDER**

11    27-04-2023                      Heard Mr. Lalan Kumar Singh, learned Counsel appearing on behalf of the petitioner and Mr. Vikash Kumar, learned SC-11 appearing on behalf of the State and Mr. Arun Kumar Arun, learned Counsel appearing on behalf of the Accountant General.

2. Mr. Lalan Kumar Singh, learned Counsel appearing on behalf of the petitioner submitted that respondents have withheld gratuity amount of Rs.



2,81,919/- on 19.12.2003 much after the date of retirement of the petitioner i.e. 30.06.2002. He further submitted that no proceeding was ever initiated against the petitioner. The show cause was issued, petitioner had replied but no order was passed, which means that the reply of the petitioner was accepted. In the criminal case the petitioner was discharged in compliance of order dated 31.05.2007 passed in Cr. Misc. No. 5655 of 2007 by this Court. On these grounds learned Counsel further submitted that withholding of gratuity without any authority of law is not sustainable. The illegal withholding has penal consequences. No opportunity was given to the petitioner before taking penal action. Thus any action based on illegal foundation is without authority of law is null and void.

3. Learned Counsel appearing on behalf of the State submitted that the conduct of petitioner in depositing certain amount in the work head executed for the NABARD from time to time amounts to misconduct. The petitioner was inflicted with penalty order and the same has been challenged before this Court in C.W.J.C. No. 10428 of 2017 which is pending before this Court. The petitioner was also



found involved in the defalcation of Rs. 2,81,000/- from the pension head of retired employee of the organization. In this regard he substantiates his statement by relying upon paragraph Nos. 9 and 10 of the supplementary counter affidavit. He further informs that the departmental proceeding was also initiated against the petitioner but not with respect to the alleged irregularity for which the gratuity has been withheld.

4. Having heard the rival submission of the parties and materials available on record, it is admitted that the petitioner had retired on 30.06.2002 and the alleged withholding of gratuity order was passed on 19.12.2003. The records passed reveals that no proceeding was initiated against the petitioner with respect to the alleged irregularity for which the gratuity has been withheld. Show cause was asked from the petitioner to which he had replied but no departmental proceeding was initiated against the petitioner for the alleged commission of offence. The petitioner is withdrawing his pension. The action of withholding the gratuity after lapse of nearly more than one year is unwarranted. The petitioner has filed a writ petition bearing



C.W.J.C. No. 10428 of 2017 which is pending before this Court. So far as the allegation of the non-payment of retiral dues of the retired employee by the petitioneris concerned in this regard record reveals that the cashier was found guilty for non-payment of the retiral benefit of the retired employee namely, Jainath Sah. The entire amount has already been recovered from account of the concerned cashier.

5. The concerned authorities are directed to forthwith release the amount payable to the petitioner on account of gratuity within a period of six weeks.

6. It goes without saying that on account of any delay in making payment of amount of gratuity, the petitioner is entitled for statutory interest on account of delay quantified by the authorities.

7. Accordingly, the present writ petition is disposed of.

**(Purnendu Singh, J)**

Niraj/-  
Nilmani/-

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