IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12756 of 2017

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Narendra Kumar Singh, S/o Late Bindeshwar Singh, Resident of Village- Navi Nagar, P.O. Tungi, District- Nalanda.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Chairman, Municipal Corporation, Biharsarif, Nalanda.
3. The Chief Executive Officer, Municipal Corporation Biharsharif, Nalanda.
4. The District Treasury Officer, Nalanda.
5. The Accountant General, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.
For Accountant General	:	Mr. Ram Kinker Choubey, Advocate
For the State	:	Mr. Arun Kumar, AC to G.P.1

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

8 15-03-2023 None appears on behalf of the petitioner and Biharsharif Municipal Corporation.

2. In the present writ application, the petitioner has prayed for following relief(s):

> **"That this is an writ application for issuance of writ/writs in nature of mandamus commanding the respondents authorities to pay to petitioner arrears of pension from 01.03.2012, arrears of gratuity, full amount of leave encashment, payment of security amount, arrear of salary relating to enhancement/revision of pay and all other dues which the petitioner is entitled in accordance with law".**

3. Learned counsel appearing on behalf of the State submitted that all most all the retiral dues of the petitioner have

already been paid which is evident from paragraph no.4 of the counter affidavit filed on behalf of respondents no. 2 & 3 and the same is reproduced hereinafter:

> **"4. That at the outset it is stated that admitted entire retiral dues of the petitioner have already been paid. The details are as follows:-**
>
> **(i) The petitioner was superannuated on 28.02.2012 on the post of Head Clerk cum Accountant from the corporation immediately pension has been issued w.e.f. 01.03.2012.**
>
> **(ii) In so far as gratuity amount has been concerned a sum of Rs. 53,898/- has been credited in the Bank account of the petitioner.**
>
> **(iii) That difference of gratuity has also been sanctioned a sum of Rs. 1,20,648/- and considering involvement of the petitioner in cement scam, 10% amount of the sanctioned amount of Rs. 1,20,648/- i.e. 12,064/- has been withheld and remaining amount on sum of Rs. 1,08,584/- has ordered to be paid to the petitioner.**
>
> **(iv) That in so far as leave encashment is concerned, as per calculation the petitioner is entitled for 158 days and after withholding 10% amount from total entitlement Rs. 1,45,212/- the remaining amount a sum of Rs. 1,30,690/- has been ordered to pay".**
>
> **(v) That it is relevant to state that the petitioner died on 26.07.2019 and immediately family pension is released in favour of his wife."**

4. He further submitted that in paragraph no.5 of the

counter affidavit it has been stated that the petitioner was involved in the cement scam.

5. On perusal of the statements made in the above paragraphs, it appears that the petitioner (since deceased) has been paid the retiral dues as claimed by him and the respondents have retain 10% of gratuity and leave encashment on account of the involvement of the petitioner in the cement scam. The petitioner died on 26.07.2019 during the pendency of the present writ petition. The record reveals that no substitution petition has been filed for substituting the heirs of the petitioner, however, such objection has not been made by the respondent, who have filed their counter affidavit after the death of the petitioner. The counter affidavit reveals that family pension of the deceased-petitioner has been released in favour of his wife Kunti Devi after his death. This Court is of the view that in absence of the deceased-petitioner who died on 26.07.2019 being substituted the writ petition requires no adjudication, in spite, of the fact that the petitioner's wife deserves the entire amount of gratuity and leave encashment to be paid after the death of the petitioner, on the basis of the allegation of his involvement in cement scam 10% of the gratuity and leave encashment has been withheld. Such action taken against the

petitioner looses its force after his retirement. In the light of the law laid down by the Apex Court in case of ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others*** reported in ***(2015) 4 SCC 334.*** In this regard paragraph No.18 is *inter alia* reproduced hereunder:

> ***"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:***
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> ***(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).***
>
> ***(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.***
>
> ***(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
>
> ***(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***
>
> ***(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."***

6. In view of the above submission made on behalf of the State and the fact that in absence of the petitioner, who died on 26.07.2019, no direction can be passed. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

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