

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4944 of 2022

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Jnan Prakash Lall S/o Late Ram Das Prasad Resident of Mohalla- 202/Block A, Vijay Complex, Beside Ram Ratan Hospital, Rampur Road, P.O.- Mahendru, P.S.- Bahadurpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Secretary, Water Resources Department, Sichai Bhawan, Govt. of Bihar, Patna.
4. The Engineer-in-Chief, Headquarter, Water Resources Department, Sichai Bhawan, Govt. of Bihar, Patna.
5. The Chief Engineer, Advance Planning (investigation) and Project Preparation, Water Resources Department, Anishabad, Govt. of Bihar, Patna.
6. The Joint Secretary (Management), Water Resources Department, Sichai Bhawan, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Giri, Adv.
For the Respondent/s : Mr. Sanjay Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 10-05-2023 Heard Mr. Sanjay Kumar Giri, learned counsel appearing on behalf of the petitioner and Mr. Sanjay Prasad, Learned counsel appearing on behalf of the respondents.

2. The main claim of the petitioner is for the payment of his provisional pension upto 90% of his total pension including other retiral dues. The departmental proceeding against the petitioner is still pending for enquiry even after his retirement. The petitioner claims that the respondents are under



legal obligation to pay the provisional pension and other retiral dues to the petitioner during pendency of his departmental proceeding as per Rule 43 (C) and (D) of the Bihar Pension Rule, 1950.

3. The brief facts of the case are that the petitioner received a show cause for some irregularity raising, strengthening and extension work of existing left and right bank embankment in Chandan System in the Bhagalpur and Banka District of Bihar. Subsequently on 08.03.2019 a resolution was taken to initiate departmental proceeding against the petitioner in relation to the above alleged irregularities in the show cause notice. On 16.01.2020 the General Administration Department reminded all the departmental heads for taking out most care for payment of retiral dues to the retiring employees well within time otherwise they will be liable for misconduct and may be proceeded departmentally. Further on 14.09.2020 The Accountant General Bihar reminded the Principal Secretary of General Administration Department for sending of pension papers of the retiring employees prior to six months of their retirement. The petitioner had submitted his pension papers to respondent no. 5 on 08.12.2021 i.e. three months prior to his retirement. The respondent no. 5 dispatched the pension paper



of the petitioner on 09.12.2021 to respondent no. 6 for the required action for issuance of pension payment order. The petitioner reminded the respondent no. 3 about his retirement and also about the pension papers which he has submitted prior to three months of his retirement on 14.02.2022. The petitioner retired on 28.02.2022. On 10.03.2022 the petitioner represented before respondent no. 3 for payment of his provisional pension during pendency of the departmental proceeding against him after his retirement including other retiral benefits.

4. Mr. Sanjay Kumar Giri, learned counsel appearing on behalf of the petitioner submits that the petitioner has retired from the post of Joint Director, Hydrology Directorate, Anishabad, Patna, which comes under the Water resources Department. The post is equivalent to the post of Superintending Engineer. He informs that the petitioner has already filed a detailed representation before the respondent no. 3, The Secretary, Water Resources Department, Sicha Bhawan Government of Bihar.

5. He further submitted that the case of the petitioner is similar to the case of one Tarkeshwar Dhar Dwivedi who had preferred **C.W.J.C. No. 5005 of 2023 (Tarkeshwar Dhar Dwivedi Vrs. The State of Bihar & Ors.)**, in which a



departmental proceeding was pending against the writ petitioner Tarkeshwar Dhar Dwivedi, who was posted as Assistant Engineer, Flood Control Division, Arrah, Bihar, which comes under the Water Resources Department. This Court held that withholding of pension, full amount of gratuity and leave encashment of 300 days is not sustainable.

6. Learned counsel has submitted that similar direction be passed in case of the present petitioner by disposing the representation of the petitioner.

7. Considering the limited prayer of the petitioner, the Secretary, Water Resources Department, Patna, Bihar is directed to dispose of the representation of the petitioner in light of the order dated 11.04.2023, passed in C.W.J.C. No. 5005 of 2023 (Tarkeshwar Dhar Dwivedi Vrs. The State of Bihar & Ors.).

8. The law is well settled by the Apex Court in case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Ors.** reported in (2013) 12 SCC 210 and subsequently in the case of **Hira Lal Vrs. State of Bihar** reported in (2020) 4 SCC 346, that any executive instruction, by which the benefit of leave encashment has been granted, the same cannot be defeated by a subsequent executive order which affect the right of the employee by holding that such executive order do not fulfill the



mandate of Article 166 of the Constitution of India.

9. The representation of the petitioner, which is pending before the Secretary, Water Resources Department must be disposed of within a period of four weeks from the date of fresh filing of the representation by the petitioner. The concerned respondent is required to take into account the fact that the petitioner has claimed parity with Judgment of Tarkeshwar Dhar (supra). The authority concerned is also directed to decide whether the law laid down by the Apex Court in case of Jitendra Kumar (supra) and Hira Lal (supra) is applicable in the case of the petitioner. If case of the petitioner stands on the similar footing then the petitioner must be given equal treatment.

10. The writ petition stands disposed of.

(Purnendu Singh, J)

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