

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5005 of 2023

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Tarkeshwar Dhar Dwivedi S/o Late Chandrabhushan Dhar Dwivedi, Resident of Bajrangpuri, Flat No.-A/301 Shiv Shankar Apartment, Shiv Mandir Road, Near Shiv Mandir, Sampatchak, Patna, P.S.-Alamganj, District-Patna-800007.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department, Bihar, Patna.
2. The Secretary, Water Resources Department, Bihar, Patna.
3. The Engineer-in-Chief, Headquarter, Water Resources Department, Bihar, Patna.
4. Engineer-in-Chief, Flood Control and Drainage, Water Resources Department, Bihar, Patna.
5. Principal Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Choudhary, Advocate Mr. Birendra Kant Chaudhary, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4 Mr. Sanjay Prasad, Advocate
For the Accountant General	:	Mr. Chaitnya Swaroop, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 11-04-2023 Heard Mr. Krishna Kant Choudhary, learned Counsel appearing on behalf of the petitioner; Mr. Anjani Kumar, learned AAG-4 appearing on behalf of the State and Mr. Chaitnya Swaroop, learned Counsel appearing on behalf of the Accountant General.

2. The petitioner has claimed, *inter alia*, for the following relief(s)

“That, by this Writ Application the Petitioner



craves indulgence of this Hon'ble Court for issuance of Writ in the nature of Mandamus for directing and commanding the Respondent Authorities specifically the Secretary, Water Resources Department, Bihar, Patna (Respondent No.2) for:

(a) Sanctioning and making payment of 90% Gratuity in view of the full bench judgment by this Hon'ble Court in CWJC No. 15328 of 2016 and other analogous cases dated 02.05.2018 whereby, it has been held that gratuity cannot be withheld in view of the provisions of Rule 43(c) of the Bihar Pension Rules and has affirmed that after coming into force of the amendment to the Pension Rules by incorporating Rule 43(c) on 19.07.2012, an employee who is facing departmental inquiry on the date of his superannuation would be entitled to provisional pension which would include Gratuity to the tune of an amount not less than 90%.

(b) Directing the competent authority i.e., Secretary, Water Resources Department, Bihar, Patna (Respondent No.2) to take a final decision with regard to the entitlement of the petitioner in terms of the full bench decision dated 02.05.2018, on the issue of Leave Encashment in view of the fact that there is no allegation of financial illegality or irregularities against the petitioner in the departmental proceeding instituted against him.

(c) Issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case."

3. The brief facts of the case are that the petitioner was posted as an Assistant Engineer, Flood Control Division, Bihar, Arrah in 2018 he was entrusted



with anti-erosion work approved vide Agenda No 144/515 for execution of anti-erosion work, an agreement was executed between the Executive Engineer and the Contractor on 23.01.2018, according to which altogether 4131 number of bags were required to be filled up with local sand by the contractor and the concerned Junior Engineer, Assistant Engineer, Executive Engineer and above the Executive Engineer were required to supervise the work.

4. During the execution of the anti-erosion work, an inspection was carried out by a committee consisting of 7 members and during inspection, the inspecting authorities found that 8 bags were filled with local sand and weighed less than the standard weight of 126.00 kgs and accordingly, at the time of inspection the inspecting authorities suggested the Executive Engineer (Works) to remove the defects and on the basis of said instructions of the inspection team, the aforesaid defects were allegedly removed. The Executive Engineer Flood Control Division, Arrah vide letter no. 724 dated



19.06.2018 informed the Superintending Engineer, Flying Squad Circle-2, Water Resources Department, Anisabad, Patna about the same.

5. Learned Counsel appearing on behalf of the petitioner submits that the petitioner had retired on 31.10.2022 from the post of Assistant Engineer, Flood Control Division, Bihar, Arrah and just before his retirement a departmental proceeding was initiated against him vide resolution dated 21.09.2022 issued under the signature of Secretary, Water Resources Department and the said departmental proceeding stands pending till date.

6. Learned counsel for the petitioner further submits that the allegation against the petitioner in departmental proceeding is that while the petitioner was posted as Assistant Engineer, Flood Control Division, Bihar, Arrah, in 2018, he was entrusted with anti-erosion work under Agenda No. 144/515 in which 8 bags filled with local sand were found to be 113.166 kgs instead of the standard weight of 126 kgs and further in



3 bags less stitching were found which ought to have been 4 lines of stitching, which is evident from resolution dated 21.09.2022.

7. Learned counsel further submits that the execution of work relating to agenda no. 144/515 has already been completed 4 years ago which is evident from the Executive Engineer (Flood Control Division), Arrah dated 06.10.2022 in spite of that only 90% provisional pension has only been sanctioned and paid to the petitioner, the full gratuity and leave encashment have not been paid to the petitioner yet and in the pension payment order dated 26.11.2022 issued from the Office, of the Principal Accountant General, Bihar, Patna, it has been informed that the Gratuity and commutation of Pension are not admissible.

8. Learned counsel for the petitioner in support of his contention has placed his reliance upon the judgement of the Apex Court in *State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Ors.* reported in *(2013) 12 SCC 210* and on judgment passed



by full Bench of this Court vide order dated 02.05.2018 passed in C.W.J.C. No. 15328 of 2016.

9. Per Contra, Learned Counsel for the Respondent has opposed the reliefs as claimed by the petitioner in the present writ petition.

10. Heard the parties.

11. It is well settled principle of law that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. The Right to receive pension was recognized as right to property by the Constitution Bench Judgement of the Apex Court in **Deokinandan Prasad vs. State of Bihar** reported in **(1971) 2 SCC 330**. This principle was reiterated in ***D.S. Nakara and Ors. vs. Union of India*** reported in **(1983) 1 SCC 305**.

12. In the facts of the case at hand, the petitioner has been denied 10% of his pension and full amount of gratuity and leave encashment has been withheld in view of a pending departmental proceeding.



On perusal, it is evident that charges levelled against the petitioner are with respect to irregularities in anti-erosion work in the year 2018-2019. However, it is to be noted that nothing has been placed before this Court to show that any progress has been made in the departmental proceeding, much less about its conclusion.

13. In such circumstances, withholding pension and full amount of gratuity and leave encashment is not sustainable .

14. Considering the specific relief made in the writ petition for grant of full pension, gratuity and leave encashment. The concerned respondents are directed to pass final order in the disciplinary proceeding and in the meantime, taking into consideration full Bench decision of this Court in ***C.W.J.C. No. 15328 of 2016***, the authorities cannot withhold entire amount of gratuity and leave encashment payable to the petitioner. This Court directs the concerned respondents to forthwith release 90% pension amount, 90% gratuity and leave



encashment to the petitioner. Petitioner, if so desired, may file detailed representation before the concerned authority.

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

(Purnendu Singh, J)

Nilmani/-
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