IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7390 of 2020

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Uday Pratap Son of Late Shambhu Nath Sinha, Resident of F.No. 103, Kaushalya Apartment, Khagaul Road, Mithapur, P.S. Jakkanpur, District-Patna. .. ... Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Agriculture Department, Bihar, Patna.
4. The Special Secretary, Agriculture Department, Bihar, Patna.
5. The Under Secretary, Agriculture Department, Bihar, Patna.
6. The Deputy Secretary, Agriculture Department, Bihar, Patna.
7. The Director, Agriculture Department, Bihar, Patna.
8. The District Agriculture Officer, Patna.
9. The Principal Secretary, Finance Department, Bihar, Patna.
10. The Accountant General (A and E), Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
For the Respondent/s : Mr. Satyeshwar Prasad, AC to SC-7
For Accountant General : Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

10 21-02-2023 Heard learned counsel for the petitioner, learned AC to SC-7 for the State and learned counsel appearing for Accountant General, Bihar, Patna.

2. The present writ application has been filed for a direction to the Respondents-authorities to pay 100 *per cent* pension to the petitioner inasmuch as according to the petitioner only 90 *per cent* pension has been sanctioned due to pendency of the criminal case on the date of retirement.

3. It is an admitted position that two FIRs were lodged against the petitioner and others during service period and on the date of retirement of the petitioner the criminal case was pending against him.

4. Learned counsel for the petitioner submits that as per Section 469 of the CrPC, no cognizance can be taken in a criminal case after expiry of the limitation period. He further submits that the case was lodged in the year 2002 and 2003 and still cognizance has not been taken. As such, it can be presumed that no criminal case was pending against the petitioner on the date of his retirement. He further submits that taking shelter of Rule 43C of the Bihar Pension Rules, the Respondents-authorities have withheld 10 *per cent* pension of the petitioner but upon careful reading of the Rule 43C and in view of the fact that a sanctioned prosecution was granted after retirement of the petitioner, the provision of 43C is not attracted in the present case against the petitioner.

5. On the other hand, learned counsel for the State submits that two FIRs were lodged against the petitioner, one in the year 2002 and another in the year 2003 during his service period. On the date of retirement of the petitioner, the criminal proceeding was pending against him and upon reading of Rule 43C, it is crystal clear that the petitioner is entitled to be paid maximum 90 *per cent* of the admissible pension if on the date of retirement any judicial and or departmental proceeding is pending. He further submits that the grant of sanction either

before the retirement or after the retirement is immaterial for the purpose of applying the provisions of Rule 43C of the Bihar Pension Rules. He next submits that it is not the case of the petitioner that he has been discharged by the competent criminal court of the charges or he has been acquitted.

6. I have heard learned counsel for the parties and have gone through the Rule 43C of the Bihar Pension Rules. It is an admitted position that on the date of retirement of the petitioner the criminal proceeding was pending against the petitioner. I fully agree with the argument of the learned counsel for the State that sanction of prosecution after retirement is immaterial and the Rule 43C of the Bihar Pension Rules fully applies in the facts of the present case. The petitioner has been paid 90 *per cent* of the pension by the Respondent-authorities. Accordingly, I do not find any infirmity and illegality in the order withholding 10 *per cent* of the pension of the petitioner during pendency of the criminal proceeding.

7. Accordingly, this petition is dismissed.

(Anil Kumar Sinha, J)

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