IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8011 of 2023

==

Narendra Mohan Jha Son of Late Govind Narayan Jha Resident of Mohalla- E-47, People Cooperative Colony, P.O.- Lohiya Nagar, P.S.- Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Under Secretary, Department of General Administration, Government of Bihar, Patna.
5. The District Magistrate, Supaul.
6. The Treasury Officer, Sachiwalaya Treasury, (Sichai Bhawan), Old Secretariat, Patna.
7. The Accountant General, Government of Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4

==

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 14-12-2023

Heard Mr. Shashi Bhushan Kumar, learned counsel appearing on behalf of the petitioner and Mr. Manish Kumar, learned GP-4.

2. The petitioner was appointed on the post of Deputy Collector in the year 1995 and having served more than 26 years, superannuated on 31.12.2021, from the post of Land Acquisition Officer, Supaul.

3. It is the admitted fact, while the petitioner was

holding the post of Block Development Officer, Garhani on account of some irregularities, in connection with allotment of Indra Awas Scheme, he was put to departmental proceeding and after having found the charges proved, inflicted with the punishment of withholding of three increment with cumulative effect vide Memo No. 15266 dated 01.12.2017. Further, the petitioner has also been debarred from promotion for five years, from the date of his entitlement for promotion.

4. On being aggrieved, the petitioner filed review petition against the order of punishment, that has been rejected vide order dated 05.02.2018.

5. It is submitted on behalf of the petitioner that order of punishment as well as the order negativing the review petition, have put to challenge in CWJC No. 22603 of 2018, which is pending consideration till date and, in the meantime, the petitioner superannuated on 31.12.2021. It is also submitted that with regard to the same occurrence, regarding irregularities in the allotment of Indra Awas Scheme, one criminal case has also been instituted bearing Charpokhari P.S. Case No. 125 of 2007, which is still pending.

6. Mr. Kumar, learned counsel for the petitioner fairly submitted that having been superannuated, the petitioner has

been allowed only 90 per cent of the pension, apart from GPF and GIC.

7. The grievance of the petitioner is that withholding of full gratuity and 10 per cent of pension, is wholly unjustified and improper. He drew the attention of this Court to the notification issued by the Government of Bihar in the Department of Finance as contained in Memo No. 77 dated 21.01.2019, whereby, the Government of Bihar under proviso to Article 309 of the Constitution has introduced Rule 43 (D) in Bihar Pension Rules, 1950. He submits across the Board that since the petitioner was facing both the departmental proceeding as well as judicial proceeding and in the departmental proceeding, the petitioner has been inflicted with the punishment and, as such, there is no impediment in granting the benefit of gratuity as well as 10 per cent of the pension. He next submitted that since the writ petition against the order of punishment is pending consideration and there is good chance of success of the petitioner, or in case, the petitioner is inflicted with the minor punishment, in such circumstances also, on account of the proviso to Rule 43 (D), the petitioner shall be entitled to get the benefit of gratuity. He also went on submitting that Rule 43 (D) uses the word "may" withheld; thus it is

discretionary in nature. In absence of the word “shall withheld”, the authority, in the submission of the petitioner, is not empowered to withhold the gratuity in all the cases. He lastly submits that the authority is empowered to withhold gratuity only till the conclusion of the departmental proceeding and once the departmental proceeding has concluded and came to an end, the withholding of gratuity is wholly illegal.

8. Per contra, learned counsel for the State submitted that there is no ambiguity in Rule 43 (D) of Bihar Pension Rules, 1950 and it clearly says that any Government servant facing departmental proceeding or judicial proceeding at the time of superannuation, the authority is empowered to withhold full gratuity till the conclusion of the departmental proceeding or the judicial proceeding. He further submits that admittedly the petitioner was facing departmental proceeding as well as judicial proceeding simultaneously, wherein, in the departmental proceeding the petitioner has been inflicted with the punishment aforenoted. However, this is the fact that till date, the judicial proceeding in relation to criminal case bearing Charpokhari P.S. Case No. 125 of 2007, is still going on, wherein, the department has also accorded sanction on 14.05.2013 itself. He, thus, submits that in such circumstances, there is no illegality in

withholding of the full gratuity and 10% of the pension.

9. Before parting with the final outcome, it would be befitting to quote Rule 43(d) of the Bihar Pension Rules, 1950.

> "43(d) if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:
>
> Provided that where Departmental proceedings has been instituted under Rules 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties under Rule 14(i)(ii) and (v) of the said rules, payment of gratuity may be made to the government servant."

10. Having heard the parties and after perusing the afore-noted provision, this Court finds substance in the submission made on behalf of the learned counsel for the State that in any of the eventuality, a Government servant, who is facing departmental proceeding or judicial proceeding or both on the date of his superannuation, in such circumstances, the authority is empowered to withhold gratuity in full. However, there is no hesitation to observe that the word "may withheld"

as explicited in the rule, empowers the authority with the discretion to exercise this power. So far the proviso to Rule 43 (D) is concerned, in the opinion of this Court, this be only applicable to departmental proceeding, which was/is initiated under rule 19 of Rules, 2005, that too in the eventuality when the delinquent is inflicted with the minor penalties under rule 14(i)(ii) and (v) of the said rules.

11. In such view of the matter, this Court does not find any merit in the present writ application, however, needless to observe that any order of withholding of gratuity and 10% of pension shall be subject to the final outcome of the pending judicial proceeding.

12. Accordingly, the present writ petition stands dismissed with the aforesaid observation.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2023.
Transmission Date	NA