

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1902 of 2021

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Sri Niwas Singh Son of Late Indrasan Singh Resident of Village- Tilakpur
Mohania, P.S.- Kargahar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Animal Husbandry Department,
Vikash Bhawan, Patna.
2. The Director, Animal Husbandry Department, Vikash Bhawan, Patna.
3. The Accountant General, Bihar, Patna.
4. The District Animal Husbandry Officer, Rohtash at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikalp, Advocate
For the Respondent/s : Mr. Arun Kumar Bhaghat, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 28-11-2023

Heard Mr. Vikalp, learned counsel appearing on
behalf of the petitioner and Mr. Arun Kumar Bhaghat, learned
counsel for the State.

2. The petitioner, who superannuated on 31.07.2020
from the post of Clerk at 1st Class Veterinary Hospital, Darigaon
at Rohtas, Sasaram has filed the present writ petition seeking a
direction upon the respondents to ensure his pension including
the gratuity, leave encashment with effect from the date of his
retirement.

3. It is submitted on behalf of the petitioner that the
petitioner having been appointed on Class 4 post has served the
department as a Clerk for over a period of 30 years and while he



was to retire on 31.07.2020, a day prior to his superannuation, the Animal Husbandry Directorate, Government of Bihar came out with the order of dismissal as contained in Memo No. 2221 dated 30.07.2020, which is marked as Annexure 1 to the writ petition.

4. The petitioner while working as a Clerk in the office of the Animal Husbandry was made accused in connection with Dawat P.S. Case No. 26 of 1997 for the offences punishable under Sections 324, 307, 353 and 186/34 of the Indian Penal Code and Sections 25, 26, 27 and 35 of the Arms Act. The aforesaid criminal case gave rise to Sessions Trial No. 36 of 1998 and finally it resulted into conviction of the petitioner for the offences under Sections 307/149 and 353 of the Indian Penal Code vide its judgment dated 14.03.2016. Consequently, for the offence under Section 307/149 of the Indian Penal Code, he has been sentenced to undergo rigorous imprisonment for five years and fine of Rs. 5,000/-. Further for the offence under Section 353 of the Indian Penal Code, he was sentenced to undergo imprisonment for one year.

5. The facts of the present case also reveals that on account of the aforesaid conviction, the petitioner was put to departmental proceeding vide letter dated 21.02.2017, which



ultimately concluded to the dismissal of the petitioner from his services vide Memo No. 2221 dated 30.07.2020.

6. It is submitted on behalf of the petitioner that the order of dismissal has been challenged by the petitioner in a separate writ petition, which is pending adjudication before the Hon'ble Court.

7. Submission has been made on behalf of the petitioner that the offences, if any, for which the petitioner has been convicted is not in relation to discharge of his service and thus, withholding of pension and other benefits in any view of the matter is not justified. He next submits that the *mala fide* of the respondent authorities is also writ large for the simple reason that just a day before the retirement, the impugned order of dismissal came to be passed withholding the pension and other benefits. That apart, there are various other infirmities in the departmental proceeding.

8. On the other hand, learned counsel for the State while refuting the contention of the petitioner has submitted that while the petitioner was discharging his duty as a Clerk in the office, he was made accused and put to trial, which resulted into conviction and, as such, in view of Rule 3 of Bihar Government Servants Conduct Rules, 1976, the conduct of the petitioner was



unbecoming of a Government Servant and thus, he was rightly put to departmental proceedings and after following all the procedure in law and after giving proper opportunity to the petitioner, the order of dismissal has been passed in terms of Rule 14 (XI) of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005.

9. This Court has heard the learned counsel for the respective parties and also perused the materials available on record, including the order of dismissal as well as the judgment passed by the learned trial Court. From the materials, it appears that the petitioner has been convicted under Sections 307/149 and 353 of the Indian Penal Code, which undoubtedly constitutes moral turpitude and thus, the petitioner has been put on departmental proceedings leading to his dismissal.

10. There is no iota of doubt that the State being a model employee can withhold pension, gratuity or leave encashment of an employee, in case he is convicted for major offence(s), after following the procedure established in law.

11. In this regard, it would be suffice to quote Rule 101 (a) of the Bihar Pension Rules, 1950.

*101 (a) Resignation of the
public service or dismissal or removal
from it for misconduct, insolvency,*



inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

12. From the plain reading of the aforesaid provisions, there is no doubt that the order of dismissal on the proved charges of misconduct entails forfeiture of past service, thus in the facts and circumstances, the petitioner has been rightly held to be not entitled for pension, gratuity and leave encashment which depends upon past services rendered by him, but he can not be denied of the benefit like G.P.F., Group Insurance, which have nothing to do with the forfeiture of past service, which benefits have rightly been accorded to the petitioner.

13. This Court in the case of ***Indradeo Prasad Singh Vs. The State of Bihar & Ors.*** reported in ***2009 (2) PLJR 38*** has made a categorical observation that though the payment of pension to a Government servant is not a bounty, but it is also not a charity to be granted as a matter of right to a person, who is convicted for serious crime.

14. This Court has also taken note of the fact that against the order of conviction, the petitioner has preferred appeal before the Hon'ble Court bearing Cr. Appeal (S.J.) No. 182 of 2016, which is pending consideration till date. Thus, in any view of the matter, this Court doesn't find any merit



consideration and accordingly, the present writ petition stands dismissed, however, the payment of pension, gratuity and leave encashment shall be subject to the outcome of the appeal pending before the Hon’ble Court as the very order of dismissal is based upon the charge of petitioner being convicted by the trial Court.

15. With the aforesaid observation, the present writ petition stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.12.2023.
Transmission Date	NA

