IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3659 of 2021

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Shrawan Kumar, Son of Late Abhimanyu Singh, permanent resident of Village-Narottampur, Post Office- Kairo (Kajra), Police Station-Kajra, District- Lahisarai Residency and at present resident of Flat No.607, Devendra Residency Apartment, Main Road, Kankarbagh, Police Station-Agam Kuan, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Co-operative Department, Bihar, Patna.
2. The Secretary, Co-operative Department, Government of Bihar, Patna.
3. The Office of Principal Accountant General (A and E), Bihar, Patna through its Senior Accountant Officer, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner	:	Mr.Sanjeev Kumar, Advocate
For the State	:	Mr.Syed Iqbal Ahmad, SC 20
		Mr.Mahedra Prasad Verma, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

Date : 04-03-2023

The petitioner has originally filed a writ application for the following relief/s:-

i) To issue a Writ in the nature of Mandamus commanding the respondents to pay Gratuity to the petitioner along with the statutory interest till the date of actual receipt of the Gratuity amount.

ii) To issue a Writ in the nature of Mandamus commanding the respondents to pay remaining salary under the head of Earned Leave to the petitioner along with statutory interest till the date of actual receipt of Earned Leave.

iii) To issue a Writ in the nature of Mandamus commanding the respondent to pay other monetary and admissible benefits accrued to the petitioner by virtue of holding the post.

iv) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

2. During pendency of the writ application, the Authorities have taken steps for release of the dues except dues under the heading 'Gratuity' and 'Earn Leave'.

3. Learned counsel for the petitioner has made limited submissions regarding withholding of earned leave. He submits that there is no provision authorizing withholding of earned leave. Respondents have not referred to any rule framed under the proviso to Article 309 of the Constitution of India, enabling the withholding of leave encashment. Reliance placed on the executive instructions dated 06.07.1993 and 21.01.2019 cannot lend legitimacy to action of the respondents withholding leave encashment.

4. Learned counsel for the State submits that while in service of the Cooperative Department of the Government of Bihar, an FIR was lodged against the petitioner and departmental proceeding was also initiated as he was arrested while accepting Rs.50,000/- (Rupees fifty thousand) bribe.

5. The learned counsel also submits that departmental proceedings against the petitioner have not been finalized. The vigilance case is also pending final adjudication. Due to his superannuation, the departmental proceedings have been converted to proceedings under Rule 43 (B) of the Bihar Pension Rules.

6. The State counsel has placed reliance on the decision of the Full Bench of this Court in the case of ***Arvind Kumar Singh & Ors. Versus The State of Bihar through the Chief Secretary & Ors.*** reported in ***2018 (2) PLJR 933***. The legal position stands settled as per paragraph 29 of the said judgment, which reads as follows:-

> *"29. From the aforesaid, it is clear that as far as leave encashment is concerned, leave encashment is not provided for in the Pension Rule. Under the Bihar Service Code, a provision has been made for grant of Earned Leave and by an executive instruction issued on 6th of July, 1993, a provision is made for encashment of Earned Leave and while making the said provision a condition is stipulated that an employee shall not be granted encashment of Earned Leave till finalization of the departmental inquiry or the judicial proceeding. When the terms and conditions with regard to encashment of leave is not governed by any statutory provision and when the same is granted by an executive or administrative decision of the State Government so long as the administrative decision to withhold encashment of Earned Leave subsists, then on the happening of such circumstances,*

as are contemplated, we see no reason to hold that leave encashment can be granted even in cases where the employee at the time of retirement is facing departmental or judicial proceeding. The law laid down in this regard in the cases referred to hereinabove do not consider this aspect of the matter, all the cases proceeded under the mistaken assumption that the leave encashment is provided for in the Pension Rules, and, therefore, we have no hesitation in holding that when an employee is facing a criminal case or a departmental proceeding, at the time of his retirement, the Government is well within its power in withholding leave encashment."

7. He submits that the respondents, therefore, are fully justified in withholding the leave encashment amounts due to the petitioner.

8. On consideration of the rival submissions, this Court would find that the undisputed facts are that proceedings arising out of Vigilance P.S. Case No. 124 of 2016 as well as the departmental proceedings arising out the said case are pending against the petitioner. Respondents have thus withheld benefits of leave encashment, which is claimed by the petitioner by way of the instant proceedings. From bare reading of the judgment of the full bench (supra), it is obvious that the respondents are well within their powers to withhold the benefit of leave encashment.

9. This Court, therefore, does not find any infirmity in the withholding of the benefit of leave encashment by the authorities. No case is made out for issuing any directions for payment of the said benefit to the petitioner, in the above circumstances.

10. Writ petition is accordingly dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	**NAFR**
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