

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17333 of 2022

=====

Banarsi Prasad Yadav, S/o Late Puran Yadav, R/o Village- Haripur, P.O.-
Barahat, P.S.- Barahat, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, (Home) Police,
Department, Bihar, Patna.
2. The Director General of Police cum Inspector General of Police, Bihar,
Patna.
3. The Deputy Inspector General of Police, East Range, Bhagalpur.
4. The Superintendent of Police, Banka.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Binod Kumar Paswan, Advocate
For the Respondent/s : Ms. Babita Kumari, AC to SC-1

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 05-12-2023

Heard Mr. Binod Kumar Paswan, learned counsel
for the petitioner and Ms. Babita Kumari, learned counsel for
the State.

2. The petitioner, who superannuated from the post
of S.I. on 28.02.2022 from the Banka police force, has filed the
present writ petition seeking a direction upon the respondents to
ensure payment of all his retiral benefits, including provisional
Pension, till final disposal of the departmental proceeding.

3. A counter affidavit has been filed on behalf of
respondent no.4.

4. Referring to the averments made in the counter
affidavit, it is submitted that the petitioner has already been paid



all the admissible amount of Group Insurance, Earned Leave and G.P.F. It is further submitted that the petitioner has also been accorded provisional gratuity to the tune of Rs.13,34,444/-.

5. The counter affidavit discloses that since the petitioner is facing departmental proceeding, bearing Nawada District Departmental (Inquiry) Proceeding No.16 of 2017, thus final action shall be taken towards the payment of his pension after disposal of pending departmental proceeding.

6. At this stage, learned counsel for the petitioner submits that withholding of entire pension is in the teeth of Rule 43(c) of the Bihar Pension Rules, 1950 as well as judgment of the Full Bench of this Court rendered in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors**, reported in **2018(2) PLJR 933**.

7. Considering the submissions advanced on behalf of the parties and the materials available on record, this Court finds substance in the submission of the petitioner.

8. Before parting with the final outcome it would be worth quoting here Rule 43(c) of the Bihar Pension Rules, 1950.

“43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not



concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).”

9. Further, the Full Bench of this Court in the case of **Arvind Kumar Singh** (supra) while considering the legal question pertaining to right of the State Government in withholding gratuity and leave encashment in cases of employee against whom, at the time of superannuation, departmental or criminal proceedings were pending, held that after coming into force of the amendment to the Pension Rules by incorporating Rule 43(c) on 19th of July, 2012, an employee who is facing departmental inquiry or judicial proceeding on the date of his superannuation would be entitled to provisional pension, which would include to the tune of an amount not less than 90 per cent.

10. It would be worth noting that subsequently the Government of Bihar came with another amendment to the Pension Rule by incorporating Rule 43(d), which reads as follows:

“43(d) if any departmental or judicial proceeding is pending against the government servant at the time of retirement, full amount of gratuity may be with held till the final conclusion of the departmental or



judicial proceeding and issuance of order accordingly.”

11. It is the admitted position that in the case in hand the Government has taken a decision to release the provisional gratuity in favour of the petitioner taking note of pending departmental proceeding at the time of his superannuation.

12. In view of the facts noted hereinabove and the position in law, the present writ petition stands disposed of with a direction to the respondent no.3 (Deputy Inspector General of Police, East Range, Bhagalpur) to consider the case of the petitioner and pass necessary order for payment of 90% provisional pension in favour of the petitioner pending disposal of the departmental proceeding in the light of Rule 43(c) of the Bihar Pension Rules, 1950 as well as the judgment of this Court rendered in the case of **Arvind Kumar Singh** (supra) preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

13. This disposes the writ petition.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2023
Transmission Date	NA

