# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.22742 of 2019**

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Satyadeo Tiwary, Son of Late Ram Bahadur Tiwari, resident of village-Krishna Nagar, P.S. Madhuban, District- East Champaran.

... ... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The District Programme Officer, (Establishment), Motihari, East Champaran.
3. The District Programme Officer, (Establishment), Motihari, East Champaran.
4. The Accountant General, Bihar, Patna.

... ... Respondents

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**Appearance :**

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| For the Petitioner/s | : | Mr. Sanjay Kumar Tiwari, Advocate |
| For the A.G. | : | Mr. Arun Kumar Arun, Advocate |
| For the State | : | Mr. Arif Bhushan, AC to G.P.17 |

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**

**ORAL JUDGMENT**

**Date : 07-04-2023**

Heard Mr. Sanjay Kumar Tiwari, learned counsel appearing on behalf of the petitioner, Mr. Arun Kumar Arun, learned counsel appearing on behalf of the Accountant General and Mr. Arif Bhushan, learned AC to G.P. 17 for the State.

2. The petitioner has prayed inter alia for following relief(s) in the writ petition:-

> **"(I) To direct the respondents as to make payment of gratuity amount of Rs. 701927/- payable to the petitioner with penal interest apart from statutory interest, as the petitioner retired**

**from the service on 30.11.2013.**

**(II) For grant any other relief or reliefs which may deem fit and proper in the facts and circumstances of the case."**

3. The petitioner has sought direction upon the respondents for making payment of gratuity amount of Rs. 701927/- with penal interest apart from the statutory interest. The petitioner had retired from his service on 30.11.2013. On the basis of sanction order received from the department, the office of the Accountant General, Bihar, Patna issued P.P.O (Pension Payment Order) dated 26.05.2014 in favour of the petitioner (Death-cum-Retirement Gratuity) to the tune of Rs. 6,74,652/- was sanctioned and sent for authorization by the District Education Officer, East Champaran, Motihari. The District Programme Officer (Establishment) vide letter no. 411, dated 18.04.2015 withheld the entire gratuity amount of the petitioner in spite of the fact that the Block Education Officer, Madhuban had certified that there is no dues against the petitioner either of any scheme under Sarva Shiksha Abhiyan or any other head. The District Programme Officer (Establishment) informed the Treasury Officer, to make payment to the petitioner excluding gratuity amount authorized in favour of the petitioner to the tune of Rs. 6,74,652/-. No reason for withholding has been assigned.

4. Learned counsel for the petitioner submitted that the respondent authorities have arbitrarily withhold the gratuity amount of Rs. 6,74,652/- sanctioned in favour of the petitioner. A authority was issued for payment of gratuity for total amount of Rs. 701927/- to the petitioner out of which the Accountant General, Bihar Patna had withheld Rs. 674652/- at the time of issuance of payment order dated 26 May, 2014. The petitioner, who had joined service on the post of Assistant Teacher in Government Middle School, Jihuli on 06.11.1979 and was transferred on 30.01.2012 to Govt. Girls Middle School, Madhuban, East Champaran and from there he retired on 30.11.2013. The office of the Accountant General (A&E), Bihar, Patna had raised the D.C.R.G. and authorized Rs. 701927/- vide G.P.O dated 09.09.2017 (Annexure-2 to the writ petition) wherein an amount of Rs. 6,74,657/- having been shown as prepaid amount and Rs. 27275/- has been shown as net payable. The petitioner is aggrieved for non payment of the gratuity amount of Rs. 6,74,652/-, which was authorized vide order dated 26.05.2014, have not been paid to the petitioner till date.

5. In this background, the petitioner submitted that no departmental proceeding is pending against the petitioner after his retirement on 30.11.2013 or deemed to have been

initiated nor the competent authority has expressed any opinion by passing of any specific order for withholding of gratuity.

6. Per contra, learned counsel appearing on behalf of respondents submitted that the petitioner was entrusted for construction of civil work of 2 ACR and 5 ACR and boundary of school building of Govt. Middle School, Banjaria, Madhuban during his posting in that school as incharge Headmaster but in spite of withdrawal of the entire amount by the petitioner, the civil work of the school was not completed till date. The petitioner was reminded about it in the meeting of BRC. The Block Education Officer, Madhuban vide letter no. 148, dated 25.04.2014 had informed the Block Education Officer, Madhuban and earlier also vide letter no. 467, dated 26.08.2013 too directed the writ petitioner to complete the civil work. The Block Education Officer vide letter no. 3009 dated 20.08.2014 had requested the District Programme Officer, SSA, East Champaran to make available the details regarding to the amount allocated by the S.S.A. and civil work done by the writ petitioner to which the District Programme Officer, SSA vide its letter no. 292 dated 14.03.2015 had submitted the details of civil work done by the petitioner stating therein that an amount of Rs. 8,27,734/- (Eight Lakh twenty seven thousand seven hundred

thirty four only) is the adjustable amount and the same is required to be deposited in the account of Vidyalaya Shiksha Samitee by the writ petitioner. It is further submitted that a report was submitted by the Block Education Officer, Madhuban vide letter no. 187, dated 20.04.2015 giving information that the petitioner has neither given cash book and other financial documents of the school nor completed the civil work of 5 ACR till the date of the submission of the report. It has further been informed in the report that an amount of Rs. 8,85,644/- was available in the account of Vidyalaya Shiksha Samittee of the school at the time of handing over the charge of I/C Headmaster of the school by the petitioner and an amount of Rs. 5,93,934/- was refunded by the then Headmaster to District Programme Officer, SSA on 04.12.2014 due to the fact that the civil work of 2 ACR was never been started and the civil work of 5 ACR has yet not been completed. A reminder was sent to the petitioner vide letter dated 05.10.2020 by the Headmaster of GMS Madhuban (Girls) that civil work of 5 ACR, the boundary of school has not been constructed till date as would be evident from the letter no. 1149, dated 25.09.2020 by which details of civil work done by the petitioner entrusted to him is still incomplete and an amount of Rs. 11,06,919/- is adjustable amount and the same is required to be deposited in the account of Vidyalaya Shiksha Samittee by the petitioner. In the report, the District Programme Officer, SSA informed that the evaluation has been done by him in light of clause 5 of letter of Lokayukta, Government of Bihar issued vide letter no. 3443, dated 06.08.2020 by which pending work is required to be evaluated and remaining amount is also required to be adjusted/refunded as per the prevailing Rule.

7. In this background, it has been submitted that petitioner has consciously withdrawn the entire amount of civil work of 5 ACR on account of construction of boundary of school which has not been completed till date. The writ petitioner is liable to adjust the government money amounting to Rs. 11,06,919/- contained in letter no. 1149 dated 25.09.2020 issued under the authority of District Programme Officer, Primary Education and Samagra Siksha, Motihari.

8. Heard the parties.

9. The petitioner is aggrieved for non payment of gratuity out of total amount of Rs. 701927/-, which was authorized for being paid to the petitioner as would appear from Annexure-2 to the writ petition. The reason assigned for withholding of Rs. 674652/- is that the petitioner had not

completed 5 ACR for which fund was allocated in the account of Vidyalaya Shiksha Samittee for construction of civil work relating to construction of the school building. The petitioner was allegedly directed by the Block Education Officer, Madhuban vide letter no. 467, dated 26.08.2013 and thereafter, vide letter no. 148 dated 25.04.2014 that civil work was not completed by the petitioner. The petitioner had retired as an Assistant Teacher on 30.11.2013. The District Programme Officer (Establishment) in counter affidavit duly sworn by him has made a specific statement that vide letter no. 3009, dated 20.08.2014 had requested the District Programme Officer, SSA, East Champaran to make available the details regarding the amount allocated by SSA and assessed civil work done by the petitioner to which the District Programme Officer had informed vide letter no. 292, dated 14.03.2015 giving the details of civil work done by the petitioner and found an amount of Rs. 8,27,734/- is adjustable and same is required to be deposited in the account of Vidyalaya Shiksha Samittee by the writ petitioner. Several communications were made by the Block Education Officer, Madhuban directing the petitioner to give cash book and other financial documents of the school. The total amount of Rs. 8,85,644/- was available in the account of

Vidyalaya Shiksha Samittee of the school at the time of handing over the charge of I/C Headmaster of the school by the petitioner. At the time of handing over the charge, the Headmaster refunded amount of Rs. 5,93,934/- to the District Programme Officer SSA on account of non-completion of civil work of 2 ACR and civil work of 5 ACR was yet to be completed. Vide letter dated 05.10.2020, the Headmaster of GMS Madhuban (Girls) had also informed the writ petitioner to complete the civil work of 5 ACR. In absence of the boundary wall being constructed as per the civil work of 5 ACR, the District Programme Officer, SSA vide letter no. 1149, dated 25.09.2020 informed that civil work entrusted to the writ petitioner still incomplete and an amount of Rs. 11,06,919/- is adjustable amount and same is required to be deposited by the petitioner in the account of Vidyalaya Shiksha Samittee.

10. The factual matrix of the case reveals that the petitioner, had joined service on the post of Assistant Teacher in Government Middle School, Jihuli on 06.11.1979 and was transferred on 30.01.2012 to Govt. Girls Middle School Madhuban, East Champaran and from there he had retired on 30.11.2013. An authority slip was issued for payment of gratuity for total amount of Rs. 701927/- to the petitioner out of which

the Accountant General, Bihar Patna had withheld Rs. 674652/- at the time of issuance of payment order dated 26 May, 2014. No show cause was issued to the petitioner for having not carried on the civil work relating to 5 ACR. The record do not reveal that the actual amount of money to have been adjusted in the account of Vidyalaya Shiksha Samittee by the competent authority of the State Government. No work orders have been brought on record by the respondents in their counter affidavit along with the estimated cost for construction of the boundary of the school building. The allegation has been made that the petitioner is responsible for non-completion of the work, however, no letter to the extent that petitioner was authorized to construct the school building has been produced. In absence of any proceeding to have been initiated during the service period of the petitioner in accordance with the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 or after the retirement of the petitioner on 30.11.2013, the respondent had proposed to initiate departmental proceeding for realization of the amount allocated for 5 ACR for constructing boundary of the school in accordance with Bihar Pension Rules, 1950.

11. To receive pension and other retiral dues is a valuable fundamental right guaranteed to a government servant,

which cannot be withheld, except by a process under the statutory rules and by way of a well defined process of law ruled by the Constitution Bench of Apex Court in ***D.S. Nakara & others v. Union of India, (1983) 1 SCC 305***. Also held by the Apex Court in ***State of West Bengal v. Haresh C. Banerjee & others,*** reported in ***(2006) 7 SCC 651*** that where withholding of pension is bad in law is to be examined in judicial review.

12. In ***State of U.P & Another v. Shri Krishna Pandey*** reported in ***(1996) 9 SCC 395***

> ***"6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as a disciplinary measure and the action initiated earlier would remain unabated after retirement. If Regulation 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the Regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four***

> ***years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on 31-3-1987 and the proceedings were initiated on 21-4-1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taking action thereon."***

13. Admittedly, no Chargesheet was issued against the petitioner before the date he attained age of superannuation i.e. 30.11.2013 or after his superannuation. Unless a statement of charge is issued to the government servant, it cannot be held that he is facing a disciplinary proceeding on institution for which the retiral dues are to be withheld. Pension being a fundamental right its withholding can take place in law only as per statutory rules and withholding of reasonable restrictions as permissible under Article 19(2) of the Constitution of India. The Hon'ble Apex Court in the case of ***Union of India v. K.V. Jankiraman, (1991) 4 SCC 109***, held that unless a chargesheet is issued, it cannot be said that the disciplinary proceedings are initiated against a public servant. Further, the respondents have not shown any specific Rule for remitting them to be withhold the gratuity without there being any pending Chargesheet or

departmental proceeding against the petitioner. It is also not a case of the respondents that the petitioner was under suspension on date of his retirement. On the contrary the case of the respondent that there is possibility of some money becoming recoverable from the petitioner. However, the competent authority has not expressed any such opinion by passing any specific order for withholding of the gratuity amount payable to the petitioner which has already been sanctioned. The Apex Court in case of ***D.V. Kapoor v. Union of India & others (1990) 4 SCC 314*** has held that if a government servant at the time of retirement has not been issued a charge sheet, his retiral benefits cannot be withheld.

14. It is also trite law that the retiral dues are payable to a government servant on the date of his retirement or superannuation and at best as per the available time limit within three months from the date of retirement and withholding the same on non-existing disciplinary proceeding and non-payment there of is not in accordance with law.

15. In the result for the foregoing reasons, the present writ petition is allowed to the extent that the respondents shall now release the entire amount of gratuity payable to the

petitioner with statutory interest. This shall be done within a period of three months from the date of receipt of the copy of this order. No order as to costs.

**(Purnendu Singh, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | N.A |
| **Uploading Date** | 17.04.2023 |
| **Transmission Date** | |