

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.945 of 2022

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Shailesh Mishra, Son of Late Surya Narayan Mishra, Resident of Ruchira Apartment, Flat No. /B, Anugrah Narayan Path, North Sri Krishnapuri, Police Station-Sri Krishnapuri, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Road Construction Department, Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Bihar, Patna.
3. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uday Bhan Singh, Advocate
For the Respondent/s	:	Mr. Subodh Kumar, AC to SC- 26
For the AG	:	Mr. Ram Kinkar Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 16-07-2024

Heard Mr. Uday Bhan Singh, learned Advocate for the Petitioner, Mr. Subodh Kumar, learned AC to SC-26 and Mr. Ram Kinkar Choubey, learned Advocate for the Accountant General.

2. The petitioner was appointed as an Assistant Engineer on 25.06.1987 in the Public Works Department (Road Construction Department). Having promoted to the post of Executive Engineer on 01.11.2006 and after serving so many years, he superannuated on 31.03.2021.

3. Aggrieved on account of non-payment of post-retiral benefits, the petitioner approached this Court by filing the



present writ petition.

3. The contention of the petitioner is that despite his superannuation, he has been paid only the amount of GPF and Group Insurance. Further, the petitioner has only been given 90% of the pension and his entire gratuity and leave encashment were withheld.

4. On the other hand, learned Advocate for the State submitted that vide Memo No. 4949(S) dated 20.06.2013, a departmental proceeding was initiated against the petitioner and on account of the pendency of the departmental proceeding, the petitioner has been sanctioned only 90% of his pension. It is also contended that there is a criminal case, bearing Vigilance P.S. Case No. 54 of 2010, which is still pending against the petitioner and yet to be concluded. Thus, in view of the provision under Rule 43(D) of Bihar Pension Rules. Gratuity is not admissible on account of pending judicial/criminal proceeding. Learned Advocate for the State also relied upon Full Bench Judgment in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors.**, reported in **2018 (2) PLJR 933**.

5. At this juncture, learned Advocate for the petitioner submitted that the departmental proceeding initiated against the petitioner has already been concluded vide



notification dated 15.12.2022 issued under the signature of Joint Secretary, Road Construction Department, Bihar, Patna. The petitioner has been inflicted with the punishment of “deduction of 15% of his pension for five years”. The copy of the aforementioned notification has been brought on record by way of Annexure-2 to the reply of the counter affidavit.

6. Referring thereto, learned Advocate for the petitioner further submitted that once the departmental proceeding is concluded, now the petitioner is entitled for his gratuity and leave encashment as well as 10% of pension, which was withheld on account of pendency of the departmental proceeding. The Department is under legal obligation to ensure the rest of the remaining retiral dues, barring 15% of his pension for five years is the contention of the learned Advocate for the petitioner.

7. Refuting the aforementioned contention, the learned Advocate representing the State submitted that as the criminal case is still pending against the petitioner, the payment under the head of gratuity as well as leave encashment are not permissible. Moreover, the petitioner has already been paid 90% of his pension.

8. Having heard the rival contention of the



respective parties and considering the materials available on record, especially the order passed in the departmental proceeding, which culminated into punishment of deduction of 15% of the pension for five years, this Court finds that the matter with regard to the payment of rest of the retiral benefits i.e. gratuity and leave encashment and 10% of pension is required to be reconsidered by the respondent no.2 in this changed circumstances.

9. In view of the decision taken in the departmental proceeding, it would be appropriate in the ends of justice to direct the respondent no.2 to consider the claim of the petitioner for his gratuity, leave encashment as well as remaining 10% of his pension afresh.

10. It is expected that the aforesaid exercise must be completed within a period of six weeks from the date of receipt/ production of a copy of this order.

11. The writ petition stands disposed of with the aforesaid direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2024
Transmission Date	NA

