

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1757 of 2022

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Dinesh Kumar Singh S/o Late Raghunath Singh Resident of Village-
Dahiwar, P.S.- Industrial Area Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department,
Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Darbhanga Zone, Darbhanga.
4. The Superintendent of Police, Samastipur.
5. The Deputy Superintendent of Police, Samastipur.
6. The Treasury Office, Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhakar Singh, Advocate Mr. Pranav Bhaskar, Advocate Mr. Birottam Narayan Singh, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4 Mr. Ajay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-11-2024

Heard the parties.

2. The petitioner superannuated on 31.08.2020, while he was holding the post of Sub Inspector. On being aggrieved by the inaction of the respondent authorities, in not extending the benefit of pension and gratuity, the petitioner approached before this Court seeking a direction upon the respondents concerned to extend the retiral benefits, especially the gratuity and full pension.

3. The short facts, which led to the filing of the writ



petition is that while the petitioner was posted as Sub Inspector of Police at Bibhutipur Police Station, in the meantime, the petitioner was trapped by a team of Vigilance Department, while accepting bribe, leading to institution of a criminal case bearing Vigilance P.S. Case No. 13 of 2016 dated 04.02.2016, registered for the offences punishable under Section 7/13(2) r/w 13(1)(D) of Prevention of Corruption Act. On the same charges a disciplinary proceeding also initiated simultaneously vide Proceeding No. 93 of 2019.

4. The departmental proceeding initiated against the petitioner finally culminated with the punishment of dismissal of the petitioner from his service vide order dated 15.04.2019, after holding the petitioner guilty of the charges framed against him. Being aggrieved, the petitioner assailed the order of dismissal in CWJC No. 6396 of 2017. The learned Court having considered the materials, has set-aside the order of dismissal and directed the respondents to reinstate the petitioner forthwith with all consequential benefits, including his back wages for the period during which he had remained out of service because of the illegal impugned action. However, the learned Court has clarified that it will be open for the disciplinary authority either to proceed against him with definite charge of misconduct, in



accordance with law.

5. In compliance with the order of this Court, the petitioner has been duly reinstated in his service with effect from 15.04.2019, i.e. the date of dismissal and was adjusted against the vacancy available in the category of A.S.I. in the District Force and the order for withdrawal of salary was passed. In the meantime, the petitioner attained the age of superannuation on 31.08.2020. On account of superannuation of the petitioner, the departmental proceeding has further been converted under Rule 43 (B) of the Bihar Pension Rules, 1950 (hereinafter referred to as “Rules, 1950”) and the disciplinary authority further proceeded against the petitioner.

6. The conducting officer, on being found the charge of misconduct proved, submitted its report and on the basis thereof, the petitioner has been visited with the punishment of withholding of two increments by the Disciplinary Authority-cum-Superintendent of Police, Samastipur. The record of the proceeding was then placed before Inspector General of Police in terms of the prescription of Bihar Police Manual vide office order contained in Memo No. 906 dated 31.03.2023, finally the petitioner has been inflicted with the punishment of withholding of 10 per cent of pension for a period of one year. It is also made



clear that whatever amount has been extended to the petitioner during the suspension period, he shall not be entitled to any benefit in addition to that. Since the impugned order of punishment has been inflicted during the pending of the writ petition, the petitioner has assailed the same by filing an interlocutory application bearing I.A. No. 01 of 2024.

7. Learned Advocate for the petitioner advertg to the aforesaid facts urged before this Court that the charges levelled in the departmental proceeding is identical to the charges, which is alleged in the criminal case and the same is pending consideration before the learned trial Court. Inflicting of the punishment on the basis of the same charge, till the conclusion of the trial is wholly unsustainable. It is further contended that admittedly, the date on which the petitioner superannuated, there was a departmental or judicial proceeding pending before him. But even to invoke Rule 43 D of the Rules, 1950, which came into force on 21.01.2019, there must be some specific order with regard to withholding of the gratuity. But, in the case in hand, there is no order as such. It is next contended that though the petitioner has been inflicted with the punishment of withholding of 10 per cent of pension, but the same was only for one year, which came to an end on 30.01.2024 and, as such, in any view



of the matter, the petitioner is entitled to get the remaining 10 per cent of pension along with the gratuity. Referring to the order of punishment, it is further contended that there had never been any punishment of withholding of gratuity and in absence of any punishment of withholding the gratuity, the action of the respondent in not extending the same, is wholly unjust and arbitrarily.

8. On the other hand, learned Advocate for the State refuting the contention of the petitioner contended that to invoke the Rule 43 (D) of the Rules, 1950, there is no requirement of specific order. It is the admitted position that the petitioner was facing departmental/judicial proceeding and, as such, he is not entitled to get the amount of gratuity and 10 per cent of pension. Drawing the attention of this Court to the materials available on record, he further contended that the criminal trial is still going on and thus, in any view of the matter, the petitioner is not entitle to the gratuity, in terms of the Rule 43 (D) of the Rules, 1950.

9. Having heard the learned Advocate for the respective parties and considering the materials available on record, especially, the order of punishment, which is brought on record as Annexure-3 to the interlocutory application, this Court



is of the opinion that the departmental proceeding initiated under Rule 43 (B) of the Rules, 1950 is culminated to the punishment of withholding of 10 per cent of pension for a period of one year. Since the petitioner has been proceeded and the punishment has been inflicted, only to the extent aforementioned, there is no reason or occasion to withhold the gratuity of the petitioner, irrespective of the fact that there is a judicial proceeding pending against the petitioner, in absence of any specific order passed in the departmental proceeding.

10. Suffice it to observe that once the petitioner is subjected to departmental proceeding under Rule 43 (B) of the Rules, 1950 and the final order has been passed, there must be specific order in terms of Rule 43 (D) to the effect of withholding of the amount of gratuity; there must be conscious decision with reference to the facts of the case. Existence and empowerment of power is different to the decision to exercise such power, unless the rules prescribe as such. Rule 43 (D) only empowers the State Government to withhold gratuity in case a government servant is facing departmental or judicial proceeding at the time of his superannuation. In the case in hand, admittedly, the date on which the petitioner superannuated, he was facing departmental or judicial



proceeding, but once the departmental proceeding culminated with certain punishment, the department cannot be allowed to travel beyond that, which action shall be termed as wholly without jurisdiction.

11. In that view of the matter, this Court finds substance in the writ petition and thus, directs the respondent authorities to ensure the payment of gratuity and the remaining 10 per cent of pension. So far the withholding of 10 per cent of pension for the period of one year is concerned, the same shall be subjected to consideration after final outcome of the criminal proceeding, arising out of Vigilance P.S. Case No. 13 of 2016. The writ petition stands allowed to the extent indicated, hereinabove.

12. It is made clear that the amount of gratuity and the remaining pension shall be paid, preferably within a period of 12 weeks, from today.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2024
Transmission Date	NA

