

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2952 of 2022

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Yogendra Sah S/o Late Bhuttu Sah @ Late Guddu Sah, Resident of Village-
Mehdauli, P.S. Bhagwanpur, Distt- Begusarai, at Present Resident of Mohalla
Meerganj Ward no. 23, P.S. Town, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal Husbandry, Bihar Patna.
2. The Director Animal Husbandry, Government of Bihar Patna.
3. The District Husbandry Officer, Begusarai.
4. The Veterinary Surgeon, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Randhir Kumar No.1, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy (GP18) with Ms. Purna Anand, AC to GP 18

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-07-2024

Heard Mr. Randhir Kumar No. 1, learned Advocate for the petitioner and Ms. Purna Anand, learned Advocate for the State.

2. The petitioner superannuated on 28.02.2019 from the post of Peon, Government Hospital, Begusarai; on being aggrieved by non-payment of full gratuity, earned leave and 10% of pension, filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

3. Learned Advocate for the petitioner contended that while the petitioner was working as Peon in the Government



Animal Hospital, Begusarai he was put under suspension *vide* Memo No. 64 dated 23.06.2016 with effect from 18.06.2016 till further order due to his incarceration in connection with Begusarai P.S. Case No. 288 of 2016 registered for the offences under Sections 304B/120B/34 of the Indian Penal Code. On being released from the judicial custody the petitioner was allowed to join and subsequently suspension of the petitioner has been revoked by the Department in the year 2017. Finally the petitioner came to be superannuated and he has been paid provisional pension to the tune of 90% along with GPF and insurance amount. However, the petitioner has not been paid full gratuity amount, leave encashment as well as 10% of pension.

4. A counter affidavit has been filed on behalf of respondent no. 3. Learned Advocate for the State urged before this Court since the petitioner has been facing criminal case giving rise to Sessions Trial No. 64 of 2018/ 79 of 2017 pending before the learned Sessions Judge-Vth, Begusarai. Thus, in view of pendency of the criminal case, the petitioner has been allowed 90% of provisional pension in terms of Rule 43(c) of the Bihar Pension Rules, 1950, whereas the entire gratuity as well as leave encashment have been withheld on account of Rule 43(d) of the Bihar Pension Rules, 1950 and the notification



issued in this regard, is the contention of the learned Advocate for the State.

5. This Court has heard learned Advocate for the petitioner as well as the State and also perused the materials available on record. Suffice to say that Rule 43(d) came into force on 21.01.2019, which empowers the State authorities to withhold payment of entire gratuity if the employee is facing departmental or judicial proceeding on the date of his superannuation. Thus, this Court finds no error in the order withholding gratuity. However, so far as withholding of leave encashment is concerned, it governs under the notification of the State Government dated 06.07.1993. The notification makes it clear that the State Government may withhold leave encashment if the personer is facing departmental or judicial proceeding and if there is even a remote chance of recovery of money.

6. The petitioner is facing criminal case for the offences under Section 304B and other allied sections of the Indian Penal Code and as such, there is no charge in relation to defalcation or misappropriation of government/public money giving rise to any chance of recovery. Nonetheless, the respondent state has authority to withhold or withdraw a pension or any part of it, if the pensioner is convicted of serious crime. It is worthy to quote



future good conduct is an implied condition of every grant of pension.

7. In such view of the matter, this Court directs the petitioner to file a proper representation before the respondent no. 2, preferably within a period of four weeks from today for payment of admissible due leave encashment. If such representation is filed, the same shall be considered in the light of the aforementioned observation and disposed of by a reasoned and speaking order, preferably within a further period of eight weeks from the date of receipt/production of a copy of this order. The payment of 10% of pension as well as full gratuity shall be abide by the final outcome of the criminal case.

8. The writ petition stands disposed of with the aforementioned observations.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.08.2024
Transmission Date	

