

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3202 of 2022

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Md. Salim Shah, Son of Late Md. Kitabali Shah, Resident of Mohalla-
Aliganj (Road No.20), P.S.- Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Bihar, Patna.
2. Secretary, Water Resources Department, Bihar, Patna.
3. Chief Engineer, Irrigation Creation, Water Resources Department, Gaya.
4. Superintending Engineer, North Koel Canal Circle, Gaya.
5. Executive Engineer, North Koel Canal Division, Gaya.
6. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Harshvardhan Shivsundaram, Advocate
For the Respondent/s	:	Mr. Sudhanshu Bhushan, AC to GP- 8
For the AG, Bihar	:	Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 06-08-2024

Heard Mr. Harshvardhan Shivsundaram, learned Advocate for the petitioner, Mr. Sudhanshu Bhushan, learned Advocate for the State and Mr. Arun Kumar Arun, learned Advocate for the Accountant General, Bihar.

2. The petitioner was appointed as Chowkidar on 01.02.1975 and after attaining the age of superannuation, he retired on 30.06.2017 during currency of suspension. In the year 1996, while the petitioner was posted in North Koel Canal Circle, Gaya, his name was implicated in a criminal case, bearing Chandauti P.S. Case no. 153 of 1996 registered for the



offences punishable under Sections 302/34 of the Indian Penal Code. The petitioner faced the trial and finally convicted and sentenced to undergo life imprisonment vide judgment dated 17.04.2001 in S.T. No. 327 of 1999.

3. On being aggrieved by the judgment of conviction and sentence of life imprisonment, the petitioner preferred Cr. Appeal (DB) No. 221 of 2001, which is still pending.

4. On account of conviction, aforementioned, the petitioner was put under suspension by the Superintending Engineer, North Koel Canal Circle, Gaya vide order dated 06.06.2001. On being released from custody, the petitioner submitted his joining and prayed for revocation of his suspension, but the same was turned down. The petitioner also approached this Court in C.W.J.C. No. 6478 of 2007, which also came to be dismissed vide order dated 09.08.2007.

5. In the light of the order of this Court, the Chief Engineer, Water Resources Department, Aurangabad vide letter no. 3075 dated 18.09.2007 directed to continue the suspension of the petitioner till final judgment is passed in Cr. Appeal (DB) No. 221 of 2001 preferred by the petitioner.

6. This is the admitted fact that the petitioner was



not subjected to any departmental proceeding on account of conviction and was allowed to superannuate on 30.06.2017. On being superannuated, the petitioner again approached before this Court in C.W.J.C. No. 20272 of 2018 for grant of his post-retiral benefits and other dues. The aforesaid writ petition came to be disposed of on 24.08.2020 with a liberty to the petitioner to file representation for redressal of his grievance.

7. The petitioner represented before the Chief Engineer, Water Resources Department, Gaya enclosing the copy of the order of this Court. The matter travelled up to the Secretary, Water Resources Department, Bihar, Patna, who was pleased to modify the order of the Chief Engineer and directed to accord 90% of provisional pension and, accordingly, the same was sanctioned vide order no. 498 dated 07.04.2021.

8. In the aforesaid premise, 90% of the provisional pension of the petitioner was fixed vide letter no. 351 dated 14.07.2021, but without according the benefit of 5th, 6th and 7th Pay Revision.

9. A counter affidavit has been filed on behalf of respondent nos. 1 to 5 as well as respondent no.6.

10. Learned Advocate for the State adverting to the averments made in the counter affidavit has vigorously argued



that the petitioner had earlier moved this Court in C.W.J.C. No. 6478 of 2007 for revocation of his suspension. The said writ petition came to be dismissed on 09.08.2007 with an observation “that the conviction of the petitioner has not been stayed by the High Court in Cr. Appeal, bearing Cr. Appeal (DB) No. 221 of 2001, pending before this Court, hence any claim or relief either in the form of reinstatement or withdrawal of the present suspension, the petitioner has to prove innocence in the criminal appeal.” Thus in such circumstances, any retirement benefit cannot be granted to him till the final decision of the appeal.

11. Learned Advocate for the State also contended that Rules 43(c) and (d) of the Bihar Pension Rules, 1950 (hereinafter referred to as ‘the Rules, 1950’) which governs the case of the petitioner makes it clear that the petitioner is not entitled for any benefit, save and except 90 % provisional pension, which has already been paid to the petitioner. It is also the contention of the State that the GIS and GPF amount had already been paid to the petitioner.

12. This Court has heard the rival contention of the learned Advocate for the respective parties.

13. Rule 43(c) of the Rules, 1950 clearly stipulates



as follows:

“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).”

14. Bare reading of the aforementioned provision, it is evident that Rule 43(c) of the Rules, 1950 would thus be attracted only in a case where a Government servant is facing departmental or judicial proceeding, the date on which he superannuated. Admittedly, the case in hand, the petitioner had already been convicted way back in the year 2001, much before the date of his superannuation; thus the judicial proceeding already concluded.

15. In the opinion of this Court, application of Rule 43(c) and 43(d) of Rules, 1950 has no application.

16. It would be worthy to note that full pension is admissible under the Rules, 1950 is not to be given as a matter of course, unless the service rendered has been really approved. The State Government reserve to themselves the powers of revising an order relating to pension passed by the Sub-ordinate



authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactorily or that there was proof of grave misconduct on his part while in service. Further Rule 43(a) of the Rules, 1950, empowers the State Government to withhold or withdraw a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct.

17. In the opinion of this Court, once an employee is convicted for a serious offence, the disciplinary authority or the Government are well within its power to withhold or forfeit the pension in accordance with the provisions prescribed under the Rules, 1950.

18. However once the decision has been at the level of the Secretary of the Department that the petitioner shall be entitled to get 90% of the provisional pension, in the opinion of this Court, the petitioner shall be entitled to get revision of his provisional pension, which is automatically attached with the pension, otherwise it would amount to an empty formality of providing pittance in view of pending criminal appeal. This Court also cannot lose sight of the fact that despite the petitioner being convicted way back in the year 2001, he has never been put in a departmental proceeding and he has been allowed to



superannuate with a stipulation that all the retiral benefit shall be abide by the decision of the Appellate Court.

19. In such circumstances, this Court directs the respondent no.2 to consider the claim of the petitioner for revision of his provisional pension on account of 5th, 6th and 7th pay revision.

20. It is expected that the respondent no.2 shall take a final decision and ensure payment of the admissible revised 90% of provisional pension to the petitioner preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

21. Suffice it to say that so far as the claim of the petitioner for grant of gratuity and final pension are concerned, the same shall be abide by the outcome of the Cr. Appeal (DB) No. 221 of 2001.

22. The writ petition stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.08.2024
Transmission Date	NA

