IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.212 of 2021
In
Civil Writ Jurisdiction Case No.12261 of 2019

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Rajiv Kumar Ambasta, Son of Late Sita Ram Prasad Resident of Bishnupur Mahamadpur Road, Ward No. 43, P.S.- Begusarai Town, District- Begusarai.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. The Secretary, Finance Department, Govt. of Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The Deputy Development Commissioner, Begusarai.
5. The Commissioner, Munger Division, Munger.
6. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Prasad, Advocate
For the Respondent/s	:	Mr. Anjani Kumar (Aag4)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-06-2024

<u>Ref: I.A. No. 01 of 2024</u>

Heard I.A. No. 01 of 2024. There is a delay of about 232 days in filing the present L.P.A. For the reasons stated in application read with the affidavit and the fact that third party right is not affected in the event of allowing the I.A. for condonation of delay and entertaining the present

L.P.A. No. 212 of 2021.

2. Accordingly, I.A. No. 01 of 2024 stands allowed while condoning the delay of about 232 days in filing L.P.A. No. 212 of 2021.

3. With the consent of the respective counsels, L.P.A is taken up for final disposal. The appellant has assailed the order dated 23.06.2020 passed in C.W.J.C. No. 12261 of 2019. Core issue involved in the present *lis* is whether appellant is entitled to gratuity amount on account of his retirement from service read with the fact that he was facing a judicial proceeding. It is relevant to reproduce Rule 43 (c) of Bihar Pension Rules, 1950.

> *"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).*

Rule 43 (d) and amended Rule 43 to the extent of incorporating 1-d on 21.01.2019. Reading of the aforementioned provisions withholding of gratuity was introduced for the first time on 21st January, 2019, whereas appellant has attained age of superannuation and retired from service on 31.12.2018, the date on which all retiral dues were required to be determined as on 31.12.2018. Therefore, amended Rule 43 (1-d) notified on 21.01.2019 is not applicable to the case in hand. Reading of Rule 43 (c) it does not speak of withholding of gratuity and it relates to only if any departmental inquiry or judicial matters are pending against retired employee, in that event, pension amount of 90% is required to be disbursed.

4. The aforementioned statutory provisions have not taken note of by the learned Single Judge while deciding C.W.J.C. No. 12261 of 2019. In view of these facts and circumstances, the learned Single Judge has committed error in dismissing C.W.J.C. No. 12261 of 2019 on 23.06.2020.

5. Accordingly, the appellant has made out a case so as to allow C.W.J.C. No. 12261 of 2019 and it is allowed. In the result, the present L.P.A. No. 212 of 2021 is also allowed.

6. The concerned Respondent/appointing authority is hereby directed to disburse the gratuity amount of the appellant within a period of three months from the date of receipt of this order, failing which appellant is entitled to litigation cost and it is quantified at Rs. 10,000/- (Rs. Ten Thousand).

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	01.07.2024
Transmission Date	N.A