

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4398 of 2024

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Balmiki Prasad Suman son of Late Votal Chaurasiya, resident of Near Child Hospital, Anathalya Road, P.S.-Katihar, District-Katihar. Petitioner/s
Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. Additional Director General of Police (Buzette, Appeal and Welfare), Bihar, Patna.
4. I.G. of Police, Purnea Range, Purnea.
5. D.I.G. of Police, Shahabad Range, Dehri-on-Sone.
6. S.P. Bhojpur at Arrah.
7. S.P. Katihar.
8. The Principal Accountant General (A and E) Bihar, Patna.
9. The Senior Accounts Officer, Office of the Principal Accountant General (A and E) Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.
For the Respondent/s : Mr. Rajan Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-10-2024

Heard Mr. Ram Hriday Prasad, learned Advocate for the petitioner and Mr. Rajan Prakash, learned Advocate for the State.

2. The petitioner is aggrieved by the inaction of the respondents in not ensuring payment of provisional pension, gratuity and leave encashment and other due benefits.

3. The petitioner was duly appointed as Constable on 20.11.1981. Having found eligible, the petitioner was promoted to the post of Assistant Sub Inspector of Police in the year 2012 and was posted in the district of Bhojpur. While the petitioner



was working as ASI, in the meantime, he was apprehended in a trap case leading to institution of Vigilance P.S. Case No. 11 of 2016. The petitioner was put to departmental proceeding and inflicted with the punishment of dismissal on 22.12.2020 by the order of the Superintendent of Police, Bhojpur. The aforesaid order of dismissal was put to challenge by filing an appeal before the DIG of Police, Shahabad Range, Dehri-on Sone. The respondent No. 5 set aside the order of dismissal on account of the order being found without jurisdiction and passed the order to reinstate the petitioner in service with effect from 22.12.2020. However, having found that the Superintendent of Police, Bhojpur was not having jurisdiction to pass the order of dismissal, he further passed the order of dismissal, but with effect from 26.02.2021. In the meantime, the petitioner attained the age of superannuation on 31.03.2021.

4. On being aggrieved by the order of the DIG of Police, Shahabad Range Dehri-on-Sone as aforenoted, the petitioner preferred an appeal before the Additional Director General of Police (Budget, Appeal and Welfare) Bihar, Patna. The aforesaid order of dismissal has once again set aside vide order dated 25.10.2022. The Additional Director General of Police (Budget, Appeal and Welfare) Bihar, Patna while setting



aside the order of dismissal has converted the proceeding under Rule 43 (b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules 1950').

5. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that admittedly the proceeding under rule 43 (b) of Rules, 1950 is pending before the authority concerned, nonetheless the petitioner is entitled to get the provisional pension to the tune of 90% in view of rule 43(c) of the Rules, 1950. It is further contended that now there is no dismissal order in existence and, as such, withholding of provisional pension is not justified in any of the manner.

6. Learned Advocate for the State referring to the averments made in the counter affidavit filed on behalf of respondent no. 7 submitted that since the petitioner had been inflicted with the punishment of dismissal, which was set aside, with a direction to continue with the departmental proceeding and the same is pending against him till date, there is no question of payment of retiral benefits. It is made clear that the petitioner has already been paid the amount under the head of GPF, Group Insurance as well as arrears of salary. It is contended on behalf of the respondent State officials that since the departmental proceeding has been converted under rule 43



(b) of Rules, 1950; thus in view of rules 43(c) and 43(d), the petitioner is not entitled for gratuity, leave encashment as well as pension.

7. Having heard the learned Advocate for the respective parties and considering the materials available on record, this Court finds that withholding of the entire pension, on the face of the record that there is no dismissal order in existence, is wholly unjustified. Admittedly, the dismissal order passed by the Superintendent of Police, Bhojpur as well as the DIG, Sahabad Range, Dehri-on-Sone have been set aside by the appellate authority and at present there is no dismissal order except the proceeding under rule 43(b). On account of the dismissal orders, having been set aside, the date on which the petitioner superannuated i.e., on 31.03.2021 there was only a departmental proceeding pending against the petitioner under rule 43(b) of Rules, 1950. Any government servant has a pending judicial or departmental proceeding, the date on which he superannuates, is entitled to get 90% of provisional pension in terms of rule 43(c) of the Rules, 1950. Denial of the same without there being any statutory prescription is wholly unsustainable in law.

8. In view of the aforesaid admitted position, the writ



petition stands disposed off with a direction to the respondent nos. 3 and 7 to look into the matter and ensure payment of provisional pension in terms of rule 43(c) of the Rules, 1950 within a period of eight weeks from the date of receipt/production of a copy of this order.

9. Suffice it to say that other remaining retiral benefits/dues of the petitioner shall be subject to the final outcome of the departmental proceeding pending against the petitioner.

10. The writ petition stands disposed off.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.10.2024
Transmission Date	

