IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16345 of 2021
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Niranjan Sharma, Son of Late Birbhadra Prasad Sharma, resident of Village- Dudha Mathia, P.O.- Ratanmala, P.S.- Majholiya, District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Accountant General, Bihar, Patna.
3. The Director Earth and Statics Directorate Planning and Development Department, New Secretariat, Patna.
4. The District Magistrate, Araria.
5. The Sub-Divisional Officer, Araria.
6. The Treasury Officer, West Champaran.

... ... Respondent/s
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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad, Adv.
For the Respondent/s	:	Mr. D. Kumar Verma, AC to SC-11
For the AG, Bihar	:	Mr. Ram Kinker Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 14-11-2024

Heard the parties.

2. The petitioner superannuated on 31.05.2018 from the post of Executive Magistrate, Araria, has preferred the present writ petition seeking a direction upon the respondents concerned to ensure payment of gratuity amount.

3. Learned counsel for the petitioner contended that the date on which the petitioner superannuated, there was neither any departmental proceeding or judicial proceeding against the petitioner and, as such, in any view of the matter, the gratuity of the petitioner cannot be withheld. He fairly

contended that, in fact, just before retirement of the petitioner, a Vigilance Case bearing no. 16 of 2018 has been instituted on 16.04.2018 resulting into payment of 90% of the provisional pension in terms of rule 43(c) of the Bihar Pension Rules, 1950 (for short 'the Rules, 1950').

4. A counter affidavit has been filed on behalf of respondent no.3.

5. Taking this Court to the averments made in the counter affidavit, learned counsel for the State submits that on account of the amendment brought in the Rules, 1950, rule 43(d) has been added. According to the rule 43(d) of the Rules, 1950, now the gratuity amount may also be withheld if on the date of retirement, a departmental or judicial proceeding is found pending against the government employee. It is also contended that since there was a judicial proceeding pending at the time of superannuation of the petitioner, he has not been extended the benefit of gratuity.

6. Having considered the submissions advanced on behalf of learned counsels for the respective parties, this Court finds the stand of respondent no.3 is unsustainable, for the simple reason that rule 43(d) of the Rules, 1950 came into effect on 21.01.2019.

7. So far the retrospectivity of the prescription of rule 43(d) is concerned, the issue has already been set at rest by the learned co-ordinate Bench of this Court in the case of **Dr. Aquil Ahmad v. The State of Bihar and Others [2021(1) PLJR 293]**, wherein the learned Court has categorically held that there cannot be a retrospective application of amended rule 27 and newly inserted rule 43(d) of the Rules, 1950, as that would be violative of Articles 14, 16 and 311 of the Constitution of India.

8. For proper appreciation of the issue involved in the instant writ petition, it would be apt to quote paragraph-37 of the said judgment.

> "37. This approach of the State respondents would be contrary to their own litigation policy. The decision taken in the case of Sushma Jaiswal (supra) and in the case of Bhuvneshwar Singh (supra) only strengthens the view of this Court that there cannot be a retrospective application of amended Rule 27 and newly inserted Rule 43(d) in the Pension Rules as that would be violative of Article 14, 16 and 311 of the Constitution of India. This Court having taken this view need not go into an issue as to whether the amendment in Rule 27 read with newly inserted Rule 43(d) may be interpreted to mean an absolute bar in making payment of gratuity to the extent of 90%."

9. From the materials available on record, admittedly at the time of superannuation of the petitioner, there was no application of rule 43(d) of the Rules, 1950, thus withholding of gratuity is found to be not sustainable. Accordingly, this Court directs the respondents no. 3 and 4 to ensure the payment of gratuity amount to the petitioner, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

10. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-11-2024
Transmission Date	