

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3667 of 2021

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Bhawani Nandan, Son of Late Gopi Nath Badami, Resident of Flat No. 102,
Block-A, Amar Kunj Apartment, Vivekanand Marg, Boring Road, Patna-13,
P.S.- S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Road Construction Department, Bihar, Patna.
3. The Deputy Secretary (Management Cell) Road Construction Department,
Bihar, Patna.
4. The Accountant General of Bihar Veer Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.
For the Respondent/s : Mr. Ravi Bhardwaj

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 15-01-2024

Heard Mr. Prabhu Nath Pathak, learned counsel for
the petitioner and Mr. Ravi Bhardwaj, learned counsel for the
State.

2. The petitioner, who superannuated on 29.02.2020
from the post of Chief Engineer (Advance Planning Wing) and
In-charge Engineer-in-Chief, Road Construction Department,
Bihar, Patna, has filed the present writ petition seeking quashing
of the order as contained in Memo No.3278(s) dated 03.06.2020
issued by the Deputy Secretary (Management Cell), Road
Construction Department, Bihar, Patna, whereby and
whereunder 10% of pension and 10% of gratuity have been
withheld on account of pendency of investigation of C.B.I.



relating to Bitumen attached with Road Division, Munger.

3. It is submitted on behalf of the petitioner that admittedly the petitioner superannuated on 29.02.2020 and the date on which the petitioner superannuated, there was neither any pending departmental proceeding nor judicial proceeding in relation to any criminal case against him. He further submitted that admittedly in contemplation of a departmental proceeding vide Notification No. 1240(S) dated 14.02.2020 issued by the Government of Bihar in the Department of Road Construction Department, he was put under suspension. However, that suspension has also been revoked vide Notification No. 2747 (S) dated 11.05.2020 w.e.f. 29.02.2020.

4. He further drew the attention of this Court to the impugned order as contained in Annexure-1 to the writ petition and with reference thereto, he submitted that though 10% of pension and 10% of gratuity of the petitioner have been withheld on account of ongoing investigation of C.B.I. relating to Bitumen attached with Road Division, Munger, but it is not at all concerned with the petitioner. All the more, till date neither the petitioner has been made accused in relation to any criminal case nor during the course of investigation, the complicity of the petitioner has come, leading to filing of the charge-sheet.



Further submission has been made that after coming into force of the amendment under the Bihar Pension Rules, 1950 (for short “the Rules, 1950”), especially rule 43 by incorporating rule 43(c) and rule 43(d), the department is only empowered to withhold 10% of pension and the gratuity, in case the employee(s) is facing any departmental or judicial proceeding, the date on which he superannuates.

5. A counter affidavit has been filed on behalf of the respondent no.3 and submission has been made that after having found certain irregularities, which took place during the service period of the petitioner, a departmental proceeding under rule 43(b) of the Rules, 1950 has been initiated vide Notification No. 610(S) dated 28.01.2021, which is still pending consideration before the department. He further submitted that since the investigation is going on at the level of the C.B.I., thus the petitioner has been allowed 90% provisional pension and 90% provisional gratuity and the final pension/gratuity shall be subject to the final outcome of the investigation.

6. This Court has heard the learned counsel appearing on behalf of the respective parties and also perused the materials available on record.

7. Before coming to the final conclusion, it would be



proper to quote rule 43(c) and rule 43(d) of the Rules, 1950, which empowers the State Authority to withhold part pension and the gratuity, which reads as follows:-

“43(c) Where the departmental proceeding or judicial proceeding, in which 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).

43(d) if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be with held till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:

Provided that where Departmental proceedings has been instituted under Rules 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties under Rule 14(i) (ii) and (v) of the said rules, payment of gratuity may be made to the government servant.”

8. Having gone through the afore-noted provisions, there is no iota of doubt that the authority is only empowered to



withhold 10% of pension and gratuity only in case(s), where any departmental or judicial proceeding is pending against the government servant at the time of retirement. However, the materials available on record, *prima facie*, suggest that the date on which the petitioner superannuated i.e. on 29.02.2020, there was no pending departmental proceeding or judicial proceeding in relation to any criminal case against him.

9. In view of the statutory provisions, the impugned order as contained in Memo No. 3278(s), dated 03.06.2020 is hereby set aside having no sanction of law, as the part pension/gratuity cannot be withheld only on account of ongoing investigation, where till date the petitioner is neither accused nor charge-sheet has been submitted. Accordingly, the writ petition stands allowed.

10. The respondents are directed to ensure the payment of remaining 10% of pension and 10% gratuity to the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

rohit/-

(Harish Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-01-2024
Transmission Date	

