

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16451 of 2022

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Anil Kumar, son of Late Indra Dev Prasad Singh, R/o P.C. Colony, CC/22,
Kankarbagh, P.S. Kankarbagh, District-Patna, PIN-800020.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Department of Science and Technology, Government of Bihar, Patna.
3. The Joint Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Science and Technology, Government of Bihar, Patna.
5. The Treasury Officer, Vikash Bhawan, Patna.
6. The Principal, Shershah College of Engineering, Sasaram.
7. The Accountant General, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Arya Achint, Advocate
For the Resp-State	:	Mr. Prateek Kumar Sinha
For the AG, Bihar	:	Mr. Ram Yash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-01-2024

Heard Ms. Nivedita Nirvikar, learned senior counsel,
along with Mr. Arya Achint, learned counsel for the petitioner;
Mr. Prateek Kumar Sinha; learned counsel for the State and Mr.
Ram Yash Singh, learned counsel for the Accountant General,
Bihar.



2. The petitioner by filing the present writ petition under Article 226 of the Constitution of India, seeking a direction upon the Principal Secretary, Department of Science and Technology, Government of Bihar to ensure payment of the remaining 10% of pension amount as well as full gratuity and leave encashment. He further sought quashing of the letter no. 1270 dated 06.05.2022 issued by the Principal Secretary, Department of Science and Technology, Government of Bihar, to the extent whereby and whereunder the respondent no.2, has withheld 10% of his pension amount.

3. The short facts, which led to filing of the present writ petition, is/are that the petitioner, who had joined on 01.06.1984 on the duly sanctioned post of Assistant Professor of Chemistry in the Department of Science and Technology in Gaya College of Engineering, affiliated with Magadh University, Bodhgaya, which is now affiliated with Aryabhata Knowledge University, had applied for 43rd Orientation Course and got selected vide notification of University Grants Commission (UGC) and, accordingly, he was awarded with certificate vide 09/05 issued by UGC, Academic Staff College.

4. Having been found eligible for promotion, the petitioner had applied for his promotion under Career Advanced



Scheme (CAS) and the Departmental Promotion Committee (DPC) on being satisfied and after proper verification of the relevant documents, recommended the name of the petitioner for promotion to the Bihar Public Service Commission (BPSC) on 24.08.2011. Consequent thereto, the BPSC under CAS Rules, promoted the petitioner on the post of Associate Professor. Accordingly, the Department of Science and Technology vide its Notification dated 23.09.2011 issued a notification for promotion of all the eligible candidates, including the petitioner.

5. The petitioner on being promoted to the post of Associate Professor, he was posted as Acting Principal (Chemistry) in Shershah College, Sasaram, where he joined on 11.12.2019 and was superannuated on 31.03.2022.

6. It is the case of the petitioner that in his entire career, there had never been any departmental proceeding or any criminal case at the behest of the department. However, all of a sudden, the Principal Secretary, Department of Science and Technology, Government of Bihar, vide its letter no. 1270 dated 06.05.2022, withheld 10% of the pension amount payable to the petitioner on the pretext of a false complaint case filed by one Rajendra Prasad Singh, against whom the petitioner had instituted an FIR pursuant to the direction of the Department



and, as such, carrying grudges against the petitioner.

7. While assailing the impugned order as noted hereinabove, learned senior counsel for the petitioner, took this Court to the background of the complaint, which is made the basis of withholding of 10% pension, gratuity as well as leave encashment of the petitioner. She submitted that allegation levelled in the complaint regarding the forged certificate of 43rd Orientation Course issued by the University Grants Commission, Academic Staff College, Patna University is, out-and-out a frivolous allegation without any foundation and this allegation has been questioned on several occasions and on different forums earlier, and the matter has been inquired by the different authorities of the Department even at the level of the Principal Secretary (Home Department), Government of Bihar in details on the direction of the Vigilance Court in connection with Complaint Case No. 56/11, but in none of them any illegality and correctness in respect of allegation of forged certificate is found.

8. Learned senior counsel, further took this Court to the inquiry report of the Principal Secretary (Home Department) dated 01.07.2013 as contained in Annexure-1 to the reply to the counter affidavit, wherein while observing that the allegation



requires deep and scientific investigation by a skilled investigation agency to ascertain the genuineness or otherwise of the records of the UGC Academic Staff College, Patna University, Patna; it is also reported that the Department of Science and Technology, Government of Bihar, is found to have acted bonafidely on the letter containing the verification report of the Director, UGC Academic Staff College, Patna University, Patna, about the participation of accused Dr. Anil Kumar in the 43rd Orientation Programme before granting promotion to him. It has further been noted that, “nothing was brought to my notice about monetary transaction between the accused persons for showing any favour to accused Dr. Anil Kumar by abusing their position as public servant”.

9. Having taken note of the afore-noted report submitted by the Principal Secretary, (Home Department), Government of Bihar, the complaint petition giving rise to Special Case No. 56/11, came to be dismissed vide order dated 21.09.2013. However, while dismissing the aforesaid case, the learned Court of Special Judge, had observed that from perusal of the inquiry report, it is clear that no offence under the Prevention of Corruption Act, 1988 is attracted against the accused persons named in the complaint petition. But so far as



the offences related to I.P.C. are concerned, they are not in the domain of this Court because this Court has got jurisdiction only when P.C. Act is concerned. However, the complainant is at liberty to approach the Court where ordinary jurisdiction of I.P.C. lies.

10. The order dated 21.09.2013 was put to challenge before this Court in Criminal Revision No. 128/2014, which also came to be dismissed vide order dated 16.05.2014 with a categorical observation that except for making sweeping allegation against the accused of indulging in corrupt practices, there is nothing to drive whom such allegation.

11. Taking shelter of the liberty as was granted by the learned Special Judge, Vigilance Court, vide order dated 21.09.2013, one another case bearing Complaint Case No. 2475/2018 was filed and subsequently the learned Court has taken cognizance for the offences under Sections 419, 418, 467, 468 and 471 of the Indian Penal Code, which is pending adjudication before the learned A.C.J.M., Patna.

12. Learned senior counsel for the petitioner further submitted at the Bar that the Vigilance Department vide its letter no. 3979 dated 24.10.2018 had also informed to the Principal Secretary, Science and Technology Department, Government of



Bihar that after the departmental review of the said report, it was decided by the Monitoring Department that it does not seem appropriate to take any further action or inquiry against the spirit of the order passed by the learned Special Court, Vigilance and the Hon'ble Patna High Court. The above remarks of the Joint Secretary, Rajya Pravaidik Shiksha Parishad, finally presented before the Hon'ble Minister of the Department to obtain the order/proposal to close the matter and the Hon'ble Minister after perusal of the file and notings of the Additional Secretary, recommended for closure of the matter.

13. Despite the afore-noted facts, the Principal Secretary, Department of Science & Technology, Government of Bihar vide its letter dated 30.05.2019 as contained in Annexure-4 to the reply of the counter affidavit, wrote to the Additional Chief Secretary, Vigilance Department, Patna, Bihar to get the matter inquired and submit a report, so that the record be placed to the higher authorities for high level order(s). Whereafter, a report has been submitted along with the copy of complaint case and order taking cognizance, ultimately leading to show cause followed by departmental proceeding under rule 43(b) of the Bihar Pension Rules, 1950.

14. In support of the submissions, while challenging



the action of the respondents, learned senior counsel, made reliance on various judgments, including the cases of **Hira Lal v. The State of Bihar [(2020) 4 SCC 346]**, **State of Jharkhand v. Jitendra Kumar Srivastava [(2013) 12 SCC 210]** and **Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330]**, wherein the Hon'ble Apex Court clearly held that the right to receive pension is recognized as a right to property and thus no person shall be deprived of his property, save by authority of law.

15. *Per contra*, learned counsel for the respondent(s), submitted that the writ petitioner had obtained the benefit of promotion on the basis of forged document produced by him followed by a show-cause notice upon him. However, on being dissatisfied with the explanation given by the petitioner, the Science and Technology Department vide its letter no. 1889 dated 30.05.2019 requested the Vigilance Department to verify the document(s). In response thereto, the Vigilance Department in its inquiry, has found the allegation against the petitioner true and it has further been informed that a complaint bearing Complaint Case No. 2475 of 2018, is already pending in the court of learned A.C.J.M., Patna. Considering the nature of allegation against the petitioner, the Department has also



resolved to initiate a departmental proceeding against the petitioner under rule 43(b) of the Bihar Pension Rules, 1950 (for short “the Rules, 1950”) vide its letter contained in Memo No. 658 dated 16.02.2023.

16. Further submission has been made that the impugned order withholding the 10% of pension, gratuity and leave encashment has been passed strictly in accordance with the rule 43(c) and rule 43(d) of the Rules, 1950, which clearly empowers the State Government to withhold the 10% of pension and entire gratuity where the departmental proceeding or judicial proceeding is pending against the government servant at the time of retirement. Since in the present matter, Criminal Complaint Case No. 2475 of 2018 is pending before the Special Judge and the same was instituted much before the retirement of the petitioner and the department proceeding under rule 43(b) of the Rules, 1950 is still pending, the Government has rightly withheld the entire gratuity and leave encashment along with 10% pension of the petitioner.

17. This Court has heard the learned counsel for the respective parties at length and also perused the materials available on record.

18. Before considering the submissions made by the



learned counsels for the respective parties, it would be proper to quote rule 43(c) and rule 43(d) of the Rules, 1950 for proper appreciation of the matter:-

“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.”

19. From the reading of the rule 43(c) of the Rules, 1950, which has been duly incorporated on 19.07.2012, there is



no iota of doubt that the amount of provisional pension shall be less than maximum admissible amount of pension but shall in no case be less than 90% where the departmental proceeding or judicial proceeding in which the prosecution has been sanctioned against the government servant during his service period has not concluded till the date of his retirement. Further rule 43(d) of the Rules, 1950, which has been incorporated under the Rules, 1950 vide Notification No. 77 dated 21.01.2019 empowers the State Government that if the departmental or judicial proceeding is pending against the government servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly.

20. Now coming to the case in hand, admittedly, the date on which the petitioner was superannuated i.e. on 31.03.2022, neither there was any departmental proceeding against him nor he was under suspension in contemplation of a departmental proceeding and, for the first time, the department had decided to initiate a departmental proceeding against the petitioner under rule 43(b) of the Rules, 1950 vide its letter as contained in Memo No. 568 dated 16.02.2023.



21. Now, the question posed before this Court that as to whether any complaint instituted by a private person against an employee with regard to his appointment or promotion, obtained or based upon the forged and fabricated document(s), or for any other reason would be suffice to withhold the pension and other retiral benefit(s) under rule 43(c) and rule 43(d) of the Rules, 1950.

22. From a careful reading of the rule 43(d) of the Rules, 1950, this Court is of the opinion that this rule empowers the State Government to exercise its discretion as to whether the full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding, if a government servant is facing departmental or judicial proceeding at the time of his/her retirement.

23. It cannot be disputed that the use of the expression “may” is not decisive. Having regard to the context the expression “may” used in a statute varying significance. In some context, it is purely permissive, in others, it may confer power and make it obligatory upon the person invested with the power to exercise it as laid down [**vide Societe De Traction ET D’ Electricite Societe Anonyme v. Kamani Engineering Company Ltd. AIR 1964 SC 558**]. It is well settled that the



word “may” is capable of meaning “must” or “shall” in the light of other context. Nevertheless, it is no doubt that the word “may” generally does not mean “must” or “shall”.

24. Now coming to the context in which the word “may” is used under Rule 43(d) of the Rules, 1950 is exclusively with regard to withholding of full gratuity of an employee, who is facing departmental or judicial proceeding at the time of his superannuation.

25. Needless to observe, pension includes gratuity under Rule 27 of the Bihar Pension Rules, 1950 and qualifies the definition of property, protected under Article 300 A of the Constitution of India. Pension, as is well established, is deferred portion of the compensation for rendering long years of service. It is a hard earned benefit, accruing to an employee in the nature of property [**vide, State of Jharkhand v. Jitendra Kumar Srivastava (2013) 12 SCC 2010**].

26. Emphasizingly, the Hon’ble Supreme Court has held that pensionary provisions must be given liberal construction more so as a social welfare measure. It is not a bounty to be dispersed contrary to rules, but very basis of grant of such pension is to facilitate a retired government employee, live with dignity, in the winter of his life. This fundamental



principle must be kept in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities [**vide V. Sukumaran v. State of Kerala, (2020) 8 SCC 106; State of West Bengal v. Harish C. Banerjee & Others (2006) 7 SCC 651**].

27. In the afore-noted legal premise, highlighting the eminence need and object of the pension/gratuity in a welfare state, the word “may” used under rule 43(d) of the Rules, 1950 cannot be interpreted as the word “shall”, as there are numerous circumstances, where an employee can be subjected to judicial proceeding on account of various other reasons unconnected to his/her services.

28. In the case in hand, there are various reasons, which necessitates the State Government to consider the matter thoroughly before withholding of entire gratuity or leave encashment as the allegation levelled by the private person has been questioned on several occasions and on different forums earlier, as taken note of in course of the submission made by the learned senior counsel representing the petitioner, wherein none of them found any, *prima facie*, illegality and correctness in respect of allegation of forged certificate and once the matter has reached up to the level of Hon’ble Minister of the



Department, who approved the recommendation to close the matter and consigned the record.

29. In view of the discussions made herein above, this Court directs the Principal Secretary, Department of Science and Technology, Government of Bihar to revisit the matter relating to withholding of gratuity and leave encashment of the petitioner in view of the submissions made on behalf of the petitioner as noted hereinabove and also in the light of the inquiry report submitted by the Principal Secretary (Home Department), Government of Bihar, the order of the Special Judge, Vigilance Court as well as the order of this Court and the decision of the Hon'ble Minister of the Department obtained in the file.

30. The matter is hereby relegated to the respondent no.2, the Secretary, Department of Science and Technology, Government of Bihar, Patna to take a fresh decision in the matter, preferably within a period of eight weeks from the date/receipt of a production of a copy of this order.

31. It is made clear that this Court has not made any interference in the impugned order whereby 10% of the pension of the petitioner has been withheld on account of pendency of judicial proceeding.



32. Accordingly, the writ application stands disposed
of.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30-01-2024
Transmission Date	

