

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.359 of 2024

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Rajiva Ranjan Singh, Late Shailendra Narain Singh, Resident of Village-
Bibhutipur, P.S.-Bibhutipur, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar.
2. The Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar.
3. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
5. The Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
6. The Principal Secretary, General Administration Department, Government of Bihar.
7. The Joint Secretary, General Administration Department, Government of Bihar.
8. The Deputy Secretary, General Administration Department, Government of Bihar.
9. The Director, Land Acquisition, Revenue and Land Reforms Department, Government of Bihar, Patna.
10. The Principal Accountant General, Bihar, Patna.
11. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
12. The District Magistrate Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivam, Advocate
For the Respondent/s	:	Mr. Abbas Haider, SC-6
		Mr. Wasi Mohammad, AC to SC-6
For the AG, Bihar	:	Mrs. Ritika Rani, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-07-2024

Heard the parties.

2. The petitioner is aggrieved by the order as



contained in Memo No. 1146 dated 12.09.2023 to the extent whereby the payment of earned leave encashment of the petitioner has been withheld on account of pendency of the departmental proceeding. The petitioner also seeks a direction upon the respondents to ensure payment of Gratuity, Group Insurance and Provident Fund amount along with the statutory interest.

3. The contention of the petitioner is in a narrow compass, which is noted hereinbelow.

4. The petitioner superannuated from the post of Additional Collector cum Public Grievance Redressal Officer, Bhagalpur on 31.08.2017. Subsequent to retirement, the petitioner approached to the concerned District Magistrate, Bhagalpur for payment of his post retiral benefit(s). Despite his representation, no action was taken compelling the petitioner to approach before this Court in C.W.J.C. No. 2663 of 2023. The afore-noted writ petition came to be allowed with a liberty to the petitioner to file a detail representation before the Divisional Commissioner, Bhagalpur. It was made clear that if the petitioner is found entitled for the benefit(s), it must be paid to him with statutory interest within the stipulated period. Pursuant thereto, the petitioner filed his representation. However, the



same was disposed of vide order as contained in Memo No. 1146 dated 12.09.2023, clarifying the position that as the petitioner is facing a departmental proceeding, he shall not be entitled for leave encashment.

5. A counter affidavit has been filed on behalf of respondents no. 7 and 8, wherein a categorical averment has been made that during the posting of the petitioner as District Land Acquisition Officer, Bhagalpur, he was found involve in Srijan Scam and thus the matter inquired into by the Central Bureau of Investigation. The petitioner has been made accused in Case No. RC2172017A0013/ACU-V/AC-11/New Delhi dated 25.08.2017. On account of involvement of the petitioner in the afore-noted Srijan Scam, the petitioner was put to a departmental proceeding vide Resolution (Memo No. 4172) dated 28.03.2017. On 09.01.2018, the memo of charge (प्रपत्र 'क') has been issued.

6. Learned counsel for the State adverting to the aforesaid facts, submitted that since the petitioner is facing a judicial proceeding as well as departmental proceeding, thus in view of rule 43(c) and 43(d) of the Bihar Pension Rules, 1950 (for short 'the Rules, 1950'), 90% provisional pension has been sanctioned in favour of the petitioner and 10% pension and full



Gratuity of the petitioner has been withheld. It is also contended that so far the payment of unutilized earned leave is concerned, the Finance Department, Government of Bihar vide its letter contained in Memo No. 4564 dated 06.07.1993, has made clear stipulation not to make any payment of leave encashment to the delinquent government servant against whom even after retirement departmental proceeding or judicial proceeding is/are being pending and prosecution has also been sanctioned.

7. Refuting the contention of the State Authorities, learned counsel for the petitioner submitted that admittedly the petitioner came to be superannuated on 31.08.2017 and at that point of time, there was no departmental proceeding against him. So far the contention of the respondent State that rule 43(d) of Rules, 1950 empowered the State Authorities to withhold full Gratuity, the same came into effect on 21.01.2019 through amendment in the Bihar Pension Rules, 1950 and, as such, in any view of the matter, it would not apply in the case of the petitioner. Heavy reliance has been placed on a judgment rendered by the learned co-ordinate Bench of this Court in the case of **Aqueel Ahmad [2021 (1) PLJR 293]**.

8. Referring to the afore-noted citation, learned counsel for the petitioner contended that rule 43(d) of Rules,



1950 cannot apply retrospectively and thus the petitioner is entitled to get Gratuity, Group Insurance, PPF as well as Leave Encashment. It is also the contention of the petitioner that the Notification of the Finance Department is applicable only in the case where there is chances of any recovery from the delinquent employee. However, there is no material suggesting that any amount is found recoverable from the petitioner.

9. Considering the rival contentions of the parties, this Court finds substance in the submission of learned counsel for the petitioner that rule 43(d) of Rules, 1950 shall not apply in the case of the petitioner, as admittedly the petitioner was superannuated on 31.08.2017, whereas the rule in question came into effect on 21.01.2019.

10. In the aforesaid facts, this Court directs respondent no.12, the District Magistrate, Bhagalpur to ensure payment of 90 % provisional Gratuity, Group Insurance and Provident Fund amount to the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

11. So far the leave encashment is concerned, the petitioner shall be at liberty to file a representation before respondent no.12, the District Magistrate, Bhagalpur bringing



on record the facts as to why the Notification issued by the Finance Department is not applicable in the case of the petitioner and there is no chance of recovery. In case of filing of such representation within a period of four weeks, the same shall be considered and disposed of by a reasoned order within a further period of eight weeks.

12. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-07-2024
Transmission Date	

