IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1026 of 2024

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Dinesh Kumar, S/o Asharfi Baitha @ Asharfi Lal Chaudhary, a permanent resident of village-Mohanpur, P.S. -Sakra, District- Muzaffarpur, State -Bihar.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar, PIN- 800001.
2. Principal Secretary, Department of General Administration, Government of Bihar, Old Secretariat, Patna, Bihar, PIN- 800001.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajni Kant Jha, Advocate
For the State	:	Mr. Yatendra Narayan, AC to GP-16

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 08-08-2024

This Court has heard Mr. Rajni Kant Jha, learned Advocate for the petitioner and Mr. Yatendra Narayan, learned Advocate for the State.

2. The petitioner by filing the present writ petition under Article 226 of the Constitution of India, seeks a direction upon the respondents to pay all his post retiral dues, including the amount equivalent to unutilized earned leave and 10% of pension with interest with effect from the due date to the date of the actual payment.

3. Shorn of unnecessary details, the brief facts of the case are that, the petitioner superannuated on 30.06.2015 from the post of Additional Collector, Darbhanga. However,

subsequent to the retirement of the petitioner, he has accorded notional promotion to the post of Joint Secretary w.e.f. 29.06.2010 vide Notification dated 11284 dated 23.08.2018. On being aggrieved by the inaction of the respondent authorities in not making payment of post retiral benefits, the petitioner moved before this Court by filing C.W.J.C. No. 3566 of 2016, which came to be disposed of on 30.10.2017 with a liberty to the petitioner to raise his grievance with regard to the non-payment of post retiral dues, including the payment of leave encahsment, before the Principal Secretary, Department of General Administration, Bihar, who shall be obliged to dispose of such representation by a reasoned and speaking order and also to ensure payment of admissible dues; the copy of the order has been marked as Annexure P/2 to the writ petition.

4. In compliance with the order of this Court, the claim of the petitioner was considered and disposed of vide order as contained in Memo No. 94 dated 03.01.2018. The afore-noted order dated 03.01.2018 states that the payment of 10% pension and the amount of leave encashment of the petitioner have been withheld on account of pendency of Sursand (Sitamarhi) P.S. Case No. 88 of 2000, Vigilance P.S. Case No. 30 of 2000 and Vigilance P.S. Case No. 52 of 2002

against him. It was made clear that sanction for releasing the due amount would be considered after disposal of all the three criminal cases.

5. It would be worth noted here that the order taking cognizance in Vigilance P.S. Case No. 30 of 2000 was put to challenge in Cr. M.P. Case No. 4167 of 2018, which came to be quashed by the Jharkhand High Court at Ranchi vide order dated 17.12.2021, the copy of which has been marked as Annexure P/4 to the writ petition.

6. Similarly, against the order taking cognizance and the proceeding in connection with Vigilance Case No. 52 of 2002, the petitioner filed Cr. M.P. No. 4168 of 2018, which also stood quashed by the Jharkhand High Court at Ranchi vide order dated 22.04.2022, the copy of which has been marked as Annexure P/5 to the writ petition.

7. So far Sursand (Sitamarhi) P.S. Case No. 88 of 2000 is concerned, till date no charge-sheet has been submitted, much less against the petitioner.

8. In the aforesaid facts and the subsequent development, the petitioner again approached to the authority concerned with a request to ensure payment of his remaining 10% pension, gratuity as well leave encashment.

9. Adverting to the facts discussed, hereinabove, learned Advocate for the petitioner vigorously contended that there is no legal justification for withholding of any part of pension or leave encashment of the petitioner in a situation where there is no criminal/judicial proceeding is pending against him. It is next contended that the date on which the petitioner superannuated, admittedly, rule 43(c) of the Bihar Pension Rules, 1950 (for short “the Rules, 1950”) was in force, which came into effect on 19.07.2012. Rule 43(c) of the Rules, 1950, empowers the State Government and its Authorities that in the event of pending departmental proceeding or judicial proceeding, in which prosecution has been sanctioned against the government servant, initiated during the service period and not concluded till his retirement, the amount of provisional pension shall be less than the maximum admissible amount of pension but in no case it shall be less than 90%. Since the petitioner superannuated on 30.06.2015, his case would certainly be governed by rule 43(c) of the Rules, 1950. But once out of three criminal cases, two of them is no more in existence because of quashing of the order(s) taking cognizance and so far the Sursand (Sitamarhi) P.S. Case No. 88 of 2000 is concerned, till date no charge-sheet has been submitted; in such

circumstances, withholding of any part of pension or gratuity as well as leave encashment is wholly without jurisdiction and not sustainable in law, is the contention of learned Advocate for the petitioner. While concluding the submissions, learned Advocate for the petitioner, further drew the attention of this Court to the explanation of rule 43 of the Rules, 1950, especially explanation (b)(ii) thereof, which clearly speaks that judicial proceeding shall be deemed to have been instituted in the case of criminal proceeding, on the date on which a complaint is made or a charge-sheet is submitted to a criminal Court.

10. On the other hand, learned Advocate for the State countered the submissions advanced on behalf of the petitioner and referring to the averments made in the counter affidavit filed on behalf of respondent no.2, contended that from the record maintained in the department, though it is found that in respect to proceeding arising out of Vigilance P.S. Case No. 30 of 2000 and Vigilance P.S. Case No. 52 of 2002, it came to be quashed by the High Court of Jharkhand at Ranchi, but admittedly till date Sursand (Sitamarhi) P.S. Case No. 88 of 2000 instituted against the petitioner is pending, wherein prosecution has already been sanctioned vide order contained in Memo No. 69 dated 30.04.2015 by the Government of Bihar in

the Department of Law, the copy of which has been marked as Annexure-R/B to the counter affidavit. Reliance has also been placed on rule 43(c) of the Rules, 1950 that the respondent authorities is competent enough under the law to withhold part of pension and gratuity. It is further contended that the Finance Department vide its Memo No. 4564/F(2) dated 06.07.1993 provided that in case, departmental proceeding or judicial proceeding has not been disposed of finally against the retired government employee till his retirement, the amount equivalent to earned leave can be withheld by the Competent Authority.

11. This Court has anxiously heard learned Advocates for the respective parties and also perused the materials available on record.

12. There is no quarrel that the rule 43(c) of the Rules, 1950, empowers the State Government to withhold part of pension and gratuity, if a government servant is facing departmental or judicial proceeding, the date on which he superannuates.

13. In the case in hand, the petitioner superannuated on 30.06.2015 and, as such, rule 43(c) of the Rules, 1950 would be attracted as the petitioner was facing judicial proceeding, the date on which he superannuated. In order to appreciate the

contention of learned Advocate for the petitioner, it would be proper to quote explanation (a) and (b) of the rule 43 of the Rules, 1950, which reads as follows:

> "**Explanation.-** For the purposes of the rule.
> (a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and
> (b) judicial proceeding shall be deemed to have been instituted:-
> (i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge sheet is submitted, to a criminal court; and
> ii) in the case of civil proceedings, on the date on which the complaint is presented or, as the case may be, an application is made, to a civil court."

14. Bare reading of the afore-noted explanation, two expressions "complaint" and "charge-sheet" have been used in order to cover all the contingencies of judicial proceedings. The final report/charge-sheet connotes conclusion of the investigation either when the investigation culminated into finding of *prima facie* case against the accused persons or to not sent up the accused persons for trial, in case no material is found. There is

no dispute that the FIR only denotes first information with regard to some cognizable offence, which set the law into motion to investigate and proceed in accordance with law and ensure submission of final report after collecting materials during course of investigation.

15. The Courts have to look essentially to the words of a Statute. When the words of a Statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.

16. Having gone through the explanation (b) of rule 43 of the Rules, 1950, in the opinion of this Court, it gives only one interpretation that judicial proceeding in case of criminal matter shall be deemed to have been instituted on the date on which a complaint is made or charge-sheet is submitted to a criminal Court.

17. Admittedly, in the case in hand, out of three criminal cases, the proceeding arising out of Vigilance P.S. Case No. 30 of 2002 and Vigilance P.S. Case No. 50 of 2002 came to be quashed by the High Court of Jharkhand at Ranchi. So far the Sursand (Sitamarhi) P.S. Case No. 88 of 2000 is concerned, till date charge-sheet has not been submitted, much less against the

petitioner, which fact has also not been confronted by the State respondent. Thus, this Court has no hesitation to hold that withholding of 10% pension and gratuity by invoking the provision of the rule 43(c) of the Rules, 1950 is unsustainable.

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

19. In view of the aforesaid facts the order dated 05.03.2024 issued by the Deputy Secretary to the Government in the Department of General Administration, Bihar also came to be quashed and cancelled to the extent whereby the request of the petitioner for remaining due pension and gratuity came to be rejected.

20. So far the payment of leave encashment is concerned, this field governs by the executive instruction bearing no. 4564 dated 06.07.1993 issued by the Finance Department. The Notification clearly speaks that the leave encashment of a government servant may be withheld till finalization of departmental inquiry or judicial proceeding in case where there is chance of recovery of defalcated amount after culmination of departmental or judicial proceeding.

21. The issue in question pertaining to payment of leave encashment was also under consideration before the Full Bench of this Court in the case of **Arvind Kumar Singh v. State of Bihar and Others [2018 (2) PLJR 933]**, wherein the learned Full Bench in no uncertain terms held that "*so long as administrative decision to withhold encashment of earned leave subsist then on the happening of such circumstances as are contemplated, we see no reason to hold that the leave encashment can be granted even in cases where the employee at the time of retirement is facing departmental or judicial proceeding. It has further been clarified that the government is well within its power in withholding leave encashment, if the circumstances required to to so.*"

22. In the case in hand, *prima facie,* the charges/allegations levelled against the petitioner in Sursand (Sitamarhi) P.S. Case No. 88 of 2000 is related to defalcation of government money leading to institution of the FIR for the offences registered under Sections 467, 468, 406, 408, 409, 420, 120B as well as 109 of the Indian Penal Code and Section 7 of the Essential Commodities Act and the investigation is still pending. Since the Notification dated 06.07.1993 is an executive instruction issued by the Finance Department, Government of Bihar, is

independent to the Rules, 1950; the explanation (b) used in rule 43 of the Rules, 1950 would not be applicable.

23. In such circumstances, this Court does not find any merit to the claim of the petitioner for grant of leave encashment. Accordingly, to that extent, the prayer of the petitioner is rejected.

24. The writ petition stands allowed in part to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	23-07-2024
Uploading Date	09-08-2024
Transmission Date	