

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4228 of 2022**

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Vinoy Kumar Singh S/o Dr. Ramanand Singh, R/o AMBA, P.S.- Shahkund,  
District- Bhagalpur, Pin- 813108.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Science and Technology, Bihar, Patna.
2. The Secretary, Department of Science and Technology, Bihar, Patna.
3. The Joint Secretary, Department of Science and Technology, Bihar, Patna.
4. The Deputy Secretary, Department of Science and Technology, Bihar, Patna.
5. The Director, Department of Science and Technology Bihar, Patna.
6. The Joint Director, Administration, Department of Science and Technology Bihar, Patna.
7. The Principal, Government Engineering College, Jamui.
8. The Accountant General of Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Jitendra Kumar Rai, Adv.  
For the Respondent/s : Mr. Virendra Kumar, AC to GP 10

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 13-02-2025**

Heard Mr. Jitendra Kumar Rai, learned Advocate for the petitioner and Mr. Virendra Kumar, learned Advocate for the State.

2. The petitioner superannuated on 28.02.2021 from the post of Assistant Professor (Senior Scale), Civil Engineering, has invoked the jurisdiction of this Court seeking a direction



upon the concerned respondent to extend all his post retiral benefits, including full pension, leave encashment and gratuity.

3. It is the contention of the petitioner that despite his superannuation long back in the year 2021, till date the petitioner has not been accorded his admissible retiral benefits.

4. Counter affidavit has been filed; it has been apprised to this Court that while the petitioner was in service he was made accused in connection with Bhagalpur Kotwali (Jogsar) P.S. Case No. 799 of 2019 for which the petitioner was also taken to judicial custody leading to suspension of the petitioner. Since the criminal proceeding is still going on and pending against the petitioner, he has only been allowed 90% of pension in terms of Rule 43(c) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'Rules, 1950') whereas the entire gratuity has been withheld in terms of Rule 43(d) of Rules 1950. So far as the entitlement of leave encashment is concerned, it is contended that the petitioner has been allowed leave encashment for 258 days vide letter No. 2252 dated 17.07.2022. Rest of the leave encashment for 42 days has been withheld in the light of the opinion given by the General Administration Department, since the petitioner was in custody for such period.

5. Dispelling the submissions of the learned Advocate



for the State, learned Advocate for the petitioner contended that it is the admitted position that a criminal case was instituted against the petitioner while he was in service. Besides the fact that such criminal prosecution was arising out of family dispute, it is explicit that till date the charge sheet has not been submitted. In support of the aforesaid contention, an “application for information” has been placed on record as Annexure-8 of the rejoinder to the counter affidavit on behalf of respondent nos. 1 to 7, which clearly demonstrates that till 22.08.2024 no charge sheet has been submitted in relation to Bhagalpur Kotwali (Jogsar) P.S. Case No. 799 of 2019. Reliance has also been placed on a decision of this Court in the case of *Akhileshwar Kumar Mishra vs. The State of Bihar & Ors., CWJC No. 13557 of 2021.*

6. This Court has heard the learned Advocates for the respective parties and also perused the materials available on record. The facts are admitted that while the petitioner was in service he was subjected to judicial proceeding on account of institution of Bhagalpur Kotwali (Jogsar) P.S. Case No. 799 of 2019. However, from the records it transpires that till date no charge sheet has been submitted in the said case. The identical issue based on identical facts came up for consideration before



this Court in the case of **Akhileshwar Kumar Mishra** (supra) wherein this Court taking note of the explanation (a) and (b) of the rule 43(b) of the Rules, 1950, that the judicial proceeding shall be deemed to have been initiated in the case of criminal proceeding on the date on which the complaint is made or charge is submitted to a criminal court held as follows:-

*“18. Before parting with the final outcome it would be apt to quote explanation (a) and (b) of rule 43 of 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 proceedings 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.”*

*19. Bare reading of the aforesaid explanation, two expressions complaint and charge sheet have been used in order to cover all the contingencies of judicial proceeding. Section 2(d) of Cr.P.C. defines the complaint whereas Section 173 refers to the final report submitted by the police after investigation. The final report 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 prima facie material is found against the accused persons. The legislature while answering the explanation has obviously given emphasis on a, prima facie, case after conclusion of the investigation. 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 material during course of investigation which culminates in cognizance being taken by the Magistrate.*

*21. Bare reading of explanation (b) of rule 43 of Rules, 1950 gives only one interpretation that*



*judicial proceeding in case of criminal proceeding 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. Admittedly, in the case in hand charge sheet has not been submitted. Thus, this Court has no hesitation to hold that withholding of 10% of pension and full gratuity by invoking the provisions of rules 43(c) and 43(d) are unsustainable and accordingly directs the respondent authorities to ensure payment of 10% of remaining pension and full gratuity, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.”*

7. In view of the aforementioned settled legal position, this Court has left with no option but to direct the respondent no. 2 to consider the claim of the petitioner for payment of remaining 10% of pension and full gratuity, after verification of the fact as to whether charge(s) has been submitted or not. In case there is no charge sheet submitted in Bhagalpur Kotwali (Jogsar) P.S. Case No. 799 of 2019, the admissible remaining 10% of pension as well as full gratuity shall be extended to the petitioner, preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.

8. The writ petition stands allowed to the extent



indicated hereinabove.

(Harish Kumar, J)

Anjani/-

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