IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17428 of 2024

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Motichand Mahto Son of Late Shekha Mahto Resident of Village-Sherwahan, P.S.- Chiutaha,District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Them Director, Secondary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Saran Division, Chapra,
4. The District Education Officer, Saran at Chapra.
5. The District Programme Officer, Secondary Education/ Literacy, Saran at Chapra,
6. The District Programme Officer, Establishment, Saran at Charan
7. The Treasury Officer, Saran at Charan
8. The Treasury Officer, Saran at Charan
9. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Adv. Mr. Kunal Kumar, Adv.
For the Respondent/s	:	Mr. Rakesh Prabhat, Adv. Mrs. Anuradha Singh, SC-21 Mrs. Nutan Kumari Sharma, AC to SC-21
For the Accountant General	:	Mr. Binod Kumar Labh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 26-06-2025

Heard the parties.

2. The petitioner is aggrieved with the action of the respondent authorities in not extending his admissible full pension and gratuity, in terms with the PPO No. 202011141335P0 and GPO No. 202011141335G0, despite his being superannuated on 28.02.2019 itself; and on the date of his superannuation there was no departmental or judicial proceeding pending against him.

3. Mr. Prashant Sinha, learned Advocate for the petitioner submitted that in terms of Rule 43(C) and 43(D) of the Bihar Pension Rules, 1950, 90 % provisional pension is payable and gratuity can be withheld only on the circumstances that a departmental or judicial proceeding was pending against an employee at the time of his superannuation. In the present case, the petitioner superannuated on 28.02.2019 and on that day, admittedly there was neither any departmental nor judicial proceeding pending against him.

4. Adverting to the facts narrated in the writ petition, it is contended that the date on which the petitioner superannuated from his post of Clerk in the office of District Programme Officer, Literacy, Saran at Chapra, there was no clerk posted in the office, in the said circumstances the petitioner waited for handing over of the charge and finally, when Sri Sunil Kumar Singh, joined in the office, after some time, he went to hand over the charge to him, but he refused to accept the charge; later on, he put a different lock on the office in which the records were kept and thereby, he completely denied access to the petitioner in the office. The entire matter was brought to the knowledge of the District Programme

Officer, Literacy, Saran at Chapra on 05.04.2019 and further, on 08.04.2019. The petitioner prepared a charge report, but the same was not received by any of the Officers.

5. Mr. Sinha, by narrating the above mentioned facts, urged before this Court that at one hand, a plea is being taken that the petitioner was not handing over the charge, but on the other hand, the work of the office had never held up and been continuing without any obstruction. Had the petitioner not handed over the charge, the office would not have been functioning properly. The petitioner kept on writing application and letters to all the concerned, but to no avail and all of a sudden, the District Programme Officer, Literacy, Saran at Chapra vide its letter contained in Memo No. 95 dated 06.09.2019 lodged an FIR against the petitioner on 13.09.2019, bearing Bhagwan Bazar P.S. Case No. 435 of 2019 under Section 409 of the Indian Penal Code, alleging that despite the letters given to the petitioner, he failed to hand over the necessary charge.

6. In the meanwhile, the Accountant General, Bihar, Patna vide its letter dated 30.04.2020 issued Pension Payment Order in favour of the petitioner, but to utter surprise, the

petitioner was paid only 90 % provisional pension, which was also held up subsequently since July, 2023. The petitioner approached before the authorities concerned, but even his provisional pension could not be started. Later on, the petitioner came to know that the District Programme Officer, Secondary Education/Literacy, Saran at Chapra has communicated vide his Letter No. 119 dated 29.08.2024 that No Objection Certificate could not be issued in favour of the petitioner, in view of the fact that the Regional Deputy Director of Education, Saran Division, Chapra has granted sanction for prosecution against the petitioner vide Memo No. 19 dated 12.01.2021.

7. Mr. Sinha, learned Advocate for the petitioner would thus submit that the prosecution sanction has been granted on 12.01.2021 and, as such, in no circumstances, the petitioner can be deprived of the benefit of full pension, irrespective of the pending criminal proceeding. In the case in hand, there is no applicability of Rule 43(C) and 43 (D) of the Bihar Pension Rules, 1950, hence any deprivation of pension/gratuity, which is a property in terms with Article 300(A) of the Constitution of India is wholly illegal, bad and unjust. The petitioner has all along been ready to hand over the charge and

in fact, the entire files which were kept in *Almirah* were received by the new clerk, but since he refused to give the receipt thereof, the petitioner cannot be subjected to sufferings owing to non payment of admissible retiral benefits. The petitioner has all along been ready to co-operate but it is the respondent authorities, who were/are adamant to deprive the petitioner from his rightful claim.

8. On the other hand, Mr. Rakesh Prabhat, learned Advocate for the State submitted that the materials available on record clearly suggest that the petitioner has not handed over the charge of the necessary files/record, which led to institution of the FIR against him and, as such, a criminal case is pending. On account of the aforesaid reason, No Objection Certificate could not have been issued till date. Referring to Letter No. 119 dated 29.08.2024, the copy of which is marked as Annexure-R/A to the counter affidavit, it is submitted that the District Programme Officer, Secondary Education/Literacy, made it clear that No Objection Certificate cannot be issued in favour of the petitioner, in view of the prosecution sanction against the petitioner. The petitioner has failed to hand over the charge, despite repeated letters and reminders given to him by the

higher officials, causing serious obstruction in discharging the duty and thereby, hampered the work of the office, hence the action of the respondents cannot be said to be arbitrary and unjustified.

9. This Court having heard the learned Advocate for the respective parties and on perusal of the materials available on record finds that the facts are admitted to the extent that the petitioner superannuated on 28.02.2019, while working as a Clerk in the office of District Programme Officer, Literacy, Saran at Chapra. The date on which he superannuated, there was neither any departmental proceeding nor criminal/judicial proceeding against him.

10. True it is that at the time of transfer or superannuation of an employee, he is obligated to hand over the charge of all the files, records, materials and articles. In case the employee failed to do so, he would certainly be subjected to departmental as well as judicial proceeding, as the case may be. However, it is a well accepted position that gratuity and pension are not bounties. The Courts time and again ruled that an employee earns these benefits by dint of his long, continuance, faithful and unblemished service. It is thus a hard earned benefit

which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law, as per the provision of Article 300 (A) of the Constitution of India. The aforesaid settled legal proposition has been highlighted in the case of ***D S Nakara & Ors. Vs. Union of India, (1983) 1 SCC 305***; ***Deokinandan Prasad Vs. State of Bihar & Ors., (1971) 2 SCC 330***, ***State of West Bengal Vs. Haresh C Banerjee & Ors., (2006) 7 SCC 651***; ***State of Punjab & Anr. Vs. Iqbal Singh, (1976) 2 SCC 1***.

11. A Two Judge Bench of the Supreme Court while reiterating the aforesaid proposition in the case of ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.; (2013) 12 SCC 210*** has ruled that a person cannot be deprived of his pension, without the authority of law, which is the constitutional mandate enshrined in Article 300(A) of the Constitution of India. It follows that attempt of State Government to take away a part of pension or gratuity or even leave encashment without any statutory provisions and under the umbrage of administrative instruction cannot be countenanced. It has also been crystallized; though administration can issue administrative instruction for the

smooth administrative function, such administrative instruction cannot supplant the rules. The executive instructions obviously do not have statutory character and therefore, cannot termed as law within the meaning of Article 300(A) of the Constitution of India. On the basis of such a circular, which do not have the force of law, the State Government cannot withhold even a part of pension or gratuity.

12. Now coming to the Bihar Pension Rules, 1950; that contemplates the provisions for extending the benefit of pension to the employees of the State Government, has also envisaged the power to withhold pension in part or full in certain circumstances. Bare reading of Rule 43(B), it would be evident that State Government has the power to withhold or withdraw pension or any part of it, when the pensioner is found to be guilty of grave misconduct, either in a departmental proceeding or judicial proceeding or causing pecuniary loss. True it is that this power can be invoked only when the proceedings are concluded, finding guilty and not before. However, that power is with a specific rigors that it shall be in respect of an event, which took place not more than four years before the institution of such proceedings. In the case in hand,

the petitioner already superannuated on 28.02.2019; hence, he is out of the purview of Rule 43(B).

13. So far Rule 43(C) as inserted in Bihar Pension Rules, 1950 with effect from 19.07.2012, it clearly stipulates that where the departmental proceeding or judicial proceeding, in which the 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 maximum admissible amount of pension, but shall in no case less than 90 %.

14. Now coming to Rule 43 (D) which empowers the State Government to withhold gratuity in the circumstances, where an employee is facing departmental or judicial proceeding at the time of superannuation. Admittedly, in the case in hand, there was no departmental or judicial proceeding at the time when the petitioner superannuated and for the first time, the FIR came to be instituted on 13.09.2019 and the sanction or prosecution came to be granted on 12.01.2021.

15. The materials available on record also disclosed that a charge report was duly prepared and the copy of which

was handed over to the District Programme Officer, Literacy, Saran at Chapra, but no effort has been taken by him to direct both the outgoing and incoming clerks to sit together and finalize the handing over and giving over the charge. It was the duty incumbent upon the higher officials to direct their subordinates to complete the handing over of the charge, the date on which a person transfer or superannuate. Failure on the part of the employee in handing over and receiving of the charge would also be a failure on the part of the higher officials, hence, in no circumstances, the employees themselves can be blamed alone.

16. The petitioner, in the case in hand, has all along been ready and willing to hand over the charge but because of one or other reason, the same was not accepted. However, this fact has not been denied that because of the non handing over the charge of the petitioner, functioning of the Office has ever came to be stalled. However, the aforesaid question is a disputed question of fact and this Court will not enter upon to decide the same; as it requires deliberation and discussion of the evidences offered by both the sides.

17. The stand of the petitioner that the action of the

respondent in withholding the pension and gratuity is wholly without jurisdiction, arbitrary and illegal also stands strengthened and substantiated, in view of the decisions rendered by the Hon'ble Apex Court in the case of ***Dr. Hira Lal Vs. Sate of Bihar & Ors., (2020) 4 SCC 346*** wherein, the Court held that the respondent State was unjustified in withholding 10 % of pension and gratuity of the appellant under administrative circulars. However, in the said case, since the appellant was facing a judicial proceeding, the Court, in terms of Rule 43 (C) has justified withholding of 10 % of amount of pension and gratuity, till conclusion of the criminal proceeding in RC Case No. 48-A of 1996.

18. The respondent authorities also failed to brought on record any Government letters/circulars, which empowers the authorities concerned to withhold the pension and gratuity, without there being invocation of any restrictive provisions of Bihar Pension Rules. All the more, in the case in hand, the PPO/GPO has already been issued by the Accountant General Office, on receipt of the sanction letter issued by the department.

19. In such circumstances, this Court is of the

considered opinion that the action of the respondents in withholding the pension and gratuity of the petitioner is wholly illegal, arbitrary and violative of Article 300(A) of the Constitution of India.

20. The respondent authorities are hereby directed to ensure the payment of admissible pension and gratuity, as also the arrears thereof, preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.

21. Suffice it to observe that this order would not come in the way either to the department or to the petitioner to make correspondences with each other, resolving the dispute of charge, irrespective of the pending criminal case.

22. With the aforesaid direction and observation, the writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.06.2025.
Transmission Date	NA