**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.1112 of 2026**

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Bipin Kumar Son of Ram Sewak Rajak, Resident of Bajrangbali Colony, Phulwari, P.S.- Phulwari, District- Patna, Bihar- 801505.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary cum Appellate Authority, Planning and Development Department, Government of Bihar, Patna.
4. The Public Grievance Redressal Officer Cum- Additional Secretary, Planning and Development Department, Government of Bihar, Patna.
5. The Under Secretary, Planning and Development Department, Government of Bihar, Patna.
6. The Accountant General, Government of Bihar, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Anand Ojha, Sr. Advocate |
| | | Mr. Ashok Kumar Karna, Advocate |
| For the Respondent/s | : | Mr. Standing Counsel (24) |
| | | Mr. Sudhanshu Shekhar, AC to SC-24 |

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**CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR**

ORAL ORDER

2 05-02-2026 Heard learned Senior Counsel for the petitioner and learned counsel for the State.

2. The writ petition has been filed for the following reliefs :-

*(i) Issuance of Writ in the nature of mandamus to release full pension and gratuity alongwith all other admitted dues, if any based on*

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*the last pay drawn by the Petitioner at the time of his retirement applying the provision of the Bihar Pension Rules for the purpose of correctly deciding the action of denial of full pension and gratuity.*

*(ii) Issuance of Writ in the nature of certiorari for quashing the Memo No. 812-00099 dated 03.10.2024, denying release of gratuity on the illegal ground of pendency of the Vigilance P.S. Case No. 27/2018 dated 02.07.2018 (without charge sheet and without prosecution section) against the petitioner contrary to the mandate of Rule-43(b) as with amendments applicable on the date of retirement of the Petitioner.*

*(iii) Issuance of Writ in the nature of certiorari for quashing the Memo No. 812-00014 dated 03.12.2024 denying gratuity and pensionary benefits on the illegal grounds of pendency of Vigilance Case No. 27/2018 dated 02.07.2018.*

*(iv) Issuance of declaration that the order contained in Memo No. 812-00099 dated 03.10.2024 denying legitimate dues illegally withheld/retained by the Authorities on account of pendency of Vigilance Case No. 27/2018 dated 02.07.2018 are illegal, without jurisdiction and the Petitioner is entitled for suitable interest as held by this Hon'ble Court and the Hon'ble Supreme Court in the Lukhnow Development Authority vs. M.C. Mehta.*

*(v) Issuance of Writ in the nature of certiorari for quashing the Memo No. 812-00117*

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*dated 19.03.2025 denying full pension and illegally justifying the provisional pension despite full knowledge of no charge sheet and no prosecution sanction not only on the date of retirement but till date in the Vigilance Case No. 27/2018 dated 02.07.2018*

*(vi) Issuance of declaration that the General Administration Department, Government of Bihar, and the parent department of the Petitioner had acted contrary to the provisions of the Bihar Pension Rules, settled judgment of this Hon'ble Court clarifying the rights of the pensioner under similar circumstances and consequentially committed breach of mandate of the State Litigation Policy.*

*(vii) Issuance of Writ in the nature of certiorari for quashing the Memo No. 812-00018 dated 30.04.2025 whereby and where under the Appellate Authority, Planning and Development Department rejected the appeal of the petitioner against Memo No. 812-00117 dated 19.03.2025 observing that in light of the opinion of the General Administration Department, Government of Bihar wherein it has been opined that payment of gratuity and blocked pension of the petitioner should be made pursuant to the outcome of the Vigilance P.S, Case no. 27/2018 dated 02.07.2018.*

*(viii) For any other relief/reliefs the petitioner is found entitled to in the facts and circumstances of the case.*

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3. Learned Senior Counsel, Mr. Anand Ojha, submits that merely on the basis of presumption of pendency of criminal case, in which there is no charge-sheet till date has been filed, whereas this petitioner is said to have retired on 31.01.2024, while, the F.I.R. is said to have lodged on 02.07.2018, and 10% of pension and pensionary benefits, including the entire gratuity amount has been withheld, invoking the jurisdiction of Section 43(b) and 43(c) of the Bihar Pension Rules, 1950.

4. It has next been submitted that the Co-Ordinate Bench in the case of ***Akhileshwar Mishra v. The State of Bihar and Others*** (C.W.J.C. No.13557 of 2021), the issues have been put at rest by holding that the authorities of the Department, have no legal authority to withhold the 10% of the pension and full gratuity amount by invoking the provisions of Section 43(c) and 43(d), where, no charge-sheet is filed in the criminal case till date of superannuation and as, such the actions of withholding have been held to be wholly without jurisdiction and to buttress his submissions, learned Senior Counsel for the petitioner has referred to certain paragraphs of the judgment rendered in the case of Akhileshwar Mishra (*supra*), which is extracted hereunder :-

> ***18***. *Before parting with the final outcome it would be apt to quote explanation (a) and (b) of*

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*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 refer 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,*

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*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.*

***20**. It is trite that duty of judicature is to act upon the true intention of the legislature. The courts have, therefore, to look essentially to the words of the statute to discern the 'referant' aiding their effort as much possible by the context. The first and primary rule of construction, as has been observed by Gajendragadkar, J. in the case of Kanai Lal Sur vs. Paramnidhi Sadhukhan, AIR 1957 SC 907; is that the intention of the Legislature must be found in the words used by the Legislature itself. The question is not what may be supposed to have been intended but what has been said. When the words of statute are clear, plain and unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.*

***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*

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*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.*

***22**. So far the payment of leave encashment is concerned, this field governs by the executive instruction bearing No.4564 dated 06.07.1993. The notification of the State Government clearly stipulates that the leave encashment may be withheld till finalization of departmental enquiry or judicial proceeding in case where there is chance of recovery of defalcated amount after culmination of departmental proceeding or judicial proceeding. Thus, this Court is of the opinion that it is for the Department to consider the claim of the petitioner for leave encashment afresh, as to whether the pending case involves serious allegation of financial irregularity or defalcation, leading to chance of recovery of any amount, and, thereupon, pass a reasoned and speaking order within the afore-stipulated period.*

5. It has next been submitted that with regard to delayed release of pension and pensionary benefits for no

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prudent reason, the Co-ordinate Bench has directed for payment of interest and necessary orders have been passed directing the authorities to pay interest @ 8% per annum from the date of retirement till the date of actual payment and to buttress his submissions, the learned Senior Counsel has referred to an order dated 12.01.2021 passed in ***C.W.J.C. No.16454 of 2017***, Sadanand Choudhary (*supra*) the relevant portion of which is extracted hereunder :-

> *Learned Senior Counsel appearing for the petitioner relies on the judgment of this Court in the case of Shyam Sunder Prasad versus State of Bihar and Ors. reported in 2017(1)PLJR 906. paragraphs 12, 13, 14, 15, 16, 17 and 18 of the said judgment are being quoted hereinbelow for ready reference.*
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> > *"12. In State of Kerala and Others vs. M. Padmanabhan Nair, [(1985) 1 SCC 429][:1985 PLJR (SC)17], the Supreme Court held that pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement, but have become valuable rights and property in their hands and any culpable delay in settlement and disbursement of post retiral dues must be visited with the penalty of interest at the current market rate till the date of its actual payment.*
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> > *13. Regarding delayed payment of pension and payment of interest the Supreme Court in*

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*Union of India vs. Justice S.S. Sandhawalia, [(1994)2 SCC 240][:1994(2)PLJR(SC)48] held:*

> *"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum retirement gratuity which was delayed by almost a year."*

*14. In S.K. Dua vs. State of Haryana and Another held: [(2008) 3 SCC 44] [:2008(2)PLJR(SC)128], the Supreme Court held :-*

> *"If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative or norms instructions, guidelines prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion,*

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*well founded and needs no authority in support thereof."*

*15. In H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd., [(2003) 3 SCC 40], the Supreme Court held that if there was a delay in not releasing post retiral benefits, it was mandatory of the court to award interest.*

*16. The pension or gratuity being no longer bounty, the Supreme Court crystalised the payment of interest for delayed payment as a normal practice in O.P. Gupta vs. Union of India& Others, ((1987) 4 SCC 328] in the following words:*

*"Normally, this court, as a settled practice, has been making direction for payment of interest at 12 percent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."*

*17. On conclusion and upon perusal of the legal principles and the ratio laid down by the Supreme Court in the decisions cited hereinabove, in the opinion of this Court since the amounts of leave encashment, group insurance and provident fund have been paid to the petitioner after a period of over six years for no fault on his part, the respondents are liable to pay interest over the amount.*

*18. It is known to all that the rate of interest on deposits has substantially been reduced since 1987. In that view of the matter, I direct the*

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*respondents no.4 and 7 to pay interest at the rate of eight per cent per annum to the petitioner in respect of belated payment of leave encashment, group insurance and provident fund from the date they became due till the date of their actual payment within three months from the date of receipt/production of a copy of this order failing which the respondents will have to pay interest at the rate of ten per cent with cost of rupees fifty thousand."*

*In the facts of the instant case, the Court directs the respondent nos. 2 to 7 to pay interest at the rate of 8% per annum from the date of retirement till the date of actual payment to the petitioner on account of late payment of the post retiral dues under the head of Provident Fund, pension, gratuity, leave encashment and group insurance. The payment shall be made within a period of 3 months from the date of receipt of a copy of this order, failing which the respondents will also pay cost of Rs. 25,000/- to the petitioner.*

6. Learned Senior Counsel further submits that since these issues have already been settled, which may be referred from the judgments of Hon'ble Apex Court, relying upon which, the Co-ordinate Bench of this Court, has passed a detailed judgment dealing with the issues and as such, the authorities have no reason to continue with such withholding of amount in question detailed above and, therefore, appropriate decision may

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be directed to be taken at their end, for which, the petitioner proposes to file a detailed representation with all supportive materials to ventilate his grievances before the respondent No.2, (The Principal Secretary, General Administration Department, Government of Bihar, Patna.)

7. On the other hand, learned counsel for the State, who has also been apprised with the judgment rendered by a Co-ordinate Bench of this Court, is not in a position to dispute the legal and factual position, provided the issues being raised are found to be correct on facts by the authorities and if there is no charge-sheet filed in the F.I.R., which is said to have been registered against the petitioner in the year 2018, till the date of superannuation, then necessary orders may be directed to be passed by the authorities, as the issues dealt in the case of Akhileshwar Mishra (*supra*) *prima facie* covers this case, if otherwise not in dispute.

8. Considering the submission of the parties, this Court finds it appropriate to direct Principal Secretary, Department of Planning and Development, Government of Bihar, to adjudicate the claim of this petitioner, on filing of detailed representation within four weeks from today, with all supportive materials along with a copies of the judgments

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rendered on the subjects in issue and if, upon due deliberation, it is found that the charge-sheet in the F.I.R., till the date of retirement has not been filed, then in terms of provisions as provided under Bihar Pension Rules, 1950, the authorities are required to pass appropriate order, finding the case of the petitioner to fall within the parameters of Akhileshwar Mishra (*supra*), and accordingly, the amount withheld, shall be released to this petitioner with appropriate interest by passing a reasoned and speaking order, in view of the direction issued by the Co-ordinate Bench, and the entire exercise shall be concluded within a period of eight weeks from the date of representation and the decision so taken shall be communicated to the petitioner and same shall also be forwarded to the Office of Accountant General for carrying out necessary formalities in this regard.

9. Accordingly, the writ petition stands disposed of.

**(Ajit Kumar, J)**

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