

(2016) 07 PAT CK 0080

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5549 of 2012 Along with Interlocutory Application No. 507 of 2014

Arun Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)
Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 184

Hon'ble Judges : Mr. Ahsanuddin Amanullah, J.

Bench : Single Bench

Advocate : Mr. Prabhu Nath Pathak, Advocate, for the Petitioner; Mr. Kinkar Kumar, SC 27, for the State; Mr. Prabhat Ranjan, Advocate, for the Accountant General

Final Decision : Disposed Off

Judgement

Mr. Ahsanuddin Amanullah, J. (Oral)—Heard learned counsel for the parties.

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2. The present Interlocutory Application has been filed seeking quashing of order contained in Memo No. 5678(S) dated 24.05.2012 issued by the Joint Secretary, Road Construction Department, Bihar, Patna during the pendency of the present case on the representation filed by the petitioner pursuant to the order dated 23.02.2012 passed in the present case by which he has been denied 10% pension and entire gratuity and leave encashment for 300 days due to pending C.B.I. Case No. RC 16(A)/97 and in terms of the resolution No. 3014 dated 31.07.1980 of the Finance Department.

3. Having considered the submissions of learned counsel for the parties, the Interlocutory Application stands allowed. The challenge to the order dated

24.05.2012 shall be deemed to be a relief prayed for in the main writ petition.

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4. Learned counsel for the petitioner submits that, as of now, the grievance is only with regard to non-payment of full pension as now 90 % is being paid, non-payment of entire gratuity as also non-payment of leave encashment for 300 days.

5. Learned counsel for the State submits that as per the amendment brought in the Bihar Pension Rules by the resolution of the State Government bearing No. 3014 dated 31.07.1980 issued by the Finance Department, payment of provisional pension and withholding gratuity has been incorporated in such Rules which would be apparent from Clause 7 (ga). Thus, in view of there being an amendment in the Pension Rules, the Court is unable to pass any mandamus for release of the remaining 10% of pension and gratuity till the pendency of the criminal case against the petitioner.

6. With regard to the earned leave, the denial to the same in terms of order impugned dated 24.05.2012 in which the ground taken is that the same has been provided for in the resolution No. 3014 dated 31.07.1980.

7. Upon going through the said resolution, by which Bihar Pension Rules have been amended, the Court is unable to find any reference with regard to earned leave as it deals with only pension and gratuity. Even learned counsel for the State fairly submits that there is no provision in the resolution of the State Government dated 31.07.1980 with regard to withholding of earned leave.

8. For the reasons aforesaid, the Court is unable to uphold the portion of the order impugned dated 24.05.2012 by which payment of leave encashment of the petitioner has been withheld in view of the pending criminal proceeding. The law is settled that there cannot be any withholding of any post retiral benefit save and except where there is a legal provision. In the present case, the relevant statutory Rules are the Bihar Pension Rules which do not provide for such withholding of encashment of earned leave. This position has not been controverted by learned State Counsel.

9. Accordingly, the said portion of the order is set aside. The petitioner is held entitled to payment of earned leave in terms of the relevant rules governing such computation. Let the benefit be paid to him within four weeks from the date of production of a copy of this order before the respondent no. 2.

10. The writ petition stands disposed off in the aforementioned terms.