(1999) 10 PAT CK 0086

In the Patna High Court

Case No : C.W.J.C. No. 11978 of 1998

Kumud Ranjan Tiwari — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 04-10-1999

Acts Referred:

Citation : (2000) 1 PLJR 99

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Manu Sankar Mishra, for the Appellant; Subhash Prasad Singh for the Accountant General, for the Respondent

Judgement

R.M. Prasad, J.—The grievance of the petitioner in this writ petition is that though he was allowed to superannuate from service on 28.2.1997, certain payments towards post retiral dues have been kept withheld for no justifiable reason. A counter affidavit has been filed on behalf of the respondents in which it is vaguely stated that after the enquiry officer submitted the report, directions have been issued by letter dated 26.9.1998 for payment of post retiral benefits to the petitioner. However, as in the said counter affidavit it is not stated as to on which date the enquiry report was received by them and what was the ultimate order passed by them in the disciplinary proceeding, this Court, vide order dated 13.8.1999, directed the respondents to file supplementary counter affidavit annexing the copy of the enquiry report and the order passed in the disciplinary proceeding within a period of three weeks.

2. Despite lapse of almost six weeks, no supplementary counter affidavit has been filed. However, learned counsel for the State has produced a photo copy of the order dated 26.9.1998 issued vide letter No. 687 by the Additional Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna, from which it appears that 10% of pension, full amount of gratuity, unutilised leave and the remaining salary of the suspension period have been kept withheld because of pendency of vigilance case. No final order passed in the so-called

proceeding has been produced.

3. This Court fails to appreciate as to how the said pensionary dues of the petitioner can be legally withheld without there being any finding of guilt. This Court in the case of Bajrang Deo Narain Sinha Vs. The State of Bihar and Others, has held that the pensionary dues payable to the employee including gratuity, which is also pension within the meaning of the Bihar Pension Rules, cannot be withheld till such time as an order is passed under rule 43(b) of the Bihar Pension Rules. Similarly, the leave encashment dues also cannot be witheld since that is paid in lieu of unutilised leave and, therefore, partakes the character of salary. Accordingly, this writ petition is disposed of with a direction to the respondents to issue necessary sanction order for payment of the aforementioned remaining pensionary dues of the petitioner within two weeks of the receipt/production of a copy of this order.