

(2020) 07 PAT CK 0249

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24784 Of 2019

Madhusudan Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b), 43(c), 43(d)

Citation : (2020) 07 PAT CK 0249

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Abhimanyu Vatsa, P. N. Shahi, Mritunjay Kumar, Kumar Priya Ranjan

Final Decision : Disposed Of

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.
2. Heard Mr. Abhimanyu Vatsa, learned counsel for the petitioner; Mr. P. N. Shahi, learned AAG 6 along with Mr. Mritunjay Kumar, learned AC to AAG 6, for the State and Mr. Kumar Priya Ranjan, learned counsel for the Accountant General.
3. The only issue involved in the present writ application is whether the petitioner would be entitled to payment of gratuity, which has been withheld.
4. After hearing learned counsel for quite some time, there is consensus and unanimity between the parties that in view of the judgment of the Hon'ble Supreme Court in Dr. Hira Lal Vs. State of Bihar [2020 (2) PLJR (SC) 29], wherein it has been held that prior to amendment brought about in the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules'), by incorporating Rule 43(b) and Rule 43(c), gratuity could not have been withheld even if departmental or criminal proceedings were pending against the petitioner. Such amendment in the Rules, admittedly, were brought in the years 2012 and 2019 respectively. However, in the present case, the petitioner superannuated on 31.01.2009, i.e.,

much prior to coming into effect of Rules 43(c) and 43(d), which gives power to the authority to withhold part of pension and gratuity.

5. Though in the Full Bench judgment of this Court in Arbind Kumar Singh vs. The State of Bihar [2018 (2) PLJR 933], the circulars of the state government with regard to withholding of full gratuity prior to the coming into force of Rules 43(c) and 43(d) have been upheld, the Hon'ble Supreme Court in the decision of Dr. Hira Lal (supra) has categorically held in the following terms:

"13.1. In our considered view, the Circulars dated 22.8.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/ executive orders. They were not issued in exercise of the power under Article 309 of the Constitution and cannot be said to have the force of law."

6. Ultimately, the Hon'ble Supreme Court has directed for payment of gratuity in the following terms:

"The State is directed to release 90% of the gratuity payable to the Appellant within a period of 12 weeks from the date of this judgment. The balance 10% will be released subject to the outcome of the criminal proceedings pending against him in R. C. Case No. 48A/1996."

7. The Court would only note here that the Full Bench judgment of this Court in the case of Arbind Kumar Singh (supra), has been noticed by the Hon'ble Supreme Court in the aforesaid judgment.

8. Thus, taking an overall view in the matter, the Court finds that in terms of the order of the Hon'ble Supreme Court in the case of Dr. Hira Lal (supra), the petitioner is required to be paid 90% of the gratuity. Accordingly, it is hereby directed that the State would release 90% of the gratuity payable to him within a period of four months from today. Similarly, the balance 10% of the gratuity will be released subject to outcome of Vigilance Case No. 10 of 1997 and Vigilance Case No. 11 of 1997 pending against him.

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