

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.18067 of 2022**

Prabhakar Prasad Singh, Son of Late Kusheshwar Singh Resident of Mohalla-  
30/E Anandpuri, P.S. Shrikrishnapuri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary State Tax, Commercial Tax Department, Govt. of Bihar, Patna.
2. The State Tax Commissioner Cum Secretary, Department of Commercial Tax, Govt. of Bihar, Patna.
3. The State Tax Addl. Commissioner Cum Joint Secretary, Department of Commercial Tax Govt. of Bihar, Patna.
4. The Principal Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

**Appearance:**

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate  
Mr. Birendra Kumar, Advocate  
For the Respondent/s : Mr. Vivek Prasad, GP-7  
Ms. Manisha Singh, AC to GP-7  
Ms. Mita Kumari, AC to GP-7  
For the Accountant General: Mr. Binod Kumar Labh, Advocate  
Mr. Shyama Kant Singh, Advocate  
Mr. Sunil Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**CAV JUDGMENT**

**Date: 23-06-2026**

1. The writ petitioner is a retired government employee, who has filed the instant writ petition for the following reliefs: -



*“(i) For issuance of an appropriate Writ/writs, order/orders, direction/directions in the nature of certiorari to set aside the Memo no. 6/Pe. 0. 14-7/2022-1898 Patna dated 08.7.2022 issued by respondent no. 3 i.e. State Tax Addl. Commissioner Cum Joint Secretary, Department of Commercial Tax, Govt. of Bihar whereby he has wrote letter to the respondent no. 4 stating therein that only 90% provisional Pension has been sanctioned to the petitioner and withheld the sanction of gratuity amount to the petitioner till final conclusion has not came in Judicial Proceeding in the light of letter no. 77 dated 21.01.2019 issued by finance department.*

*(ii) To direct the Respondents to immediate Pay the 100% Pension amount of gratuity and amount of unutilized leave salary to the petitioner along with 18% interest per annum.*

*(iii) To grant any other relief/reliefs to the petitioner under the facts and circumstances of the case as well as in law.”*

2. The petitioner retired from service w.e.f. 31<sup>st</sup> of March, 2022.= After his retirement on superannuation, he was entitled to get his retiral benefits, such as pension, gratuity,



amount of group insurance and amount of unutilized leave salary. That on 8th of July, 2022, the Respondent No. 3 wrote a letter to Respondent No. 4, stating that 90 per cent of provisional pension has been sanctioned to the petitioner but the amount of gratuity was withheld on account of pendency of judicial proceedings and as and when the judicial proceedings would come to an end, he is entitled to get the remaining dues of his retiral benefits.

3. Petitioner has stated that in the year 2004, series of police cases was instituted against him, being Jehanabad P. S. Case Nos. 424 of 2004, 436 of 2004, 441 of 2004, 462 of 2004 and 463 of 2004 on the allegation of embezzlement of fund of Jehanabad Treasury. It is found from the record that in some of the cases, the petitioner was acquitted and some cases are pending for the last 22 years. Further case of the petitioner is that, following institution of criminal proceeding, departmental enquiry was started against him and he suffered minor penalties in the departmental enquiry by stopping two increments. After completion of the departmental enquiry, he was directed to join the service. He performed his duties with due diligence till the date of his retirement, but except 90 per cent of the provisional pension, no retiral benefit was paid to



him by the respondents.

4. Hence, the instant writ.

5. The Respondent Nos. 1 to 3 have been contesting the writ petition by filing a counter affidavit, denying all material allegations made out in the writ petition. It is further stated by the respondents that 10 per cent of the pension amount, entire gratuity, leave encashment and group insurance were withheld due to pendency of the criminal cases against him.

6. The parties have filed rejoinder to the counter affidavit and supplementary counter affidavit, asserting the same allegation.

7. It is not in dispute that a departmental proceeding was initiated against the petitioner. The petitioner was found guilty and minor punishment of withholding two increments was imposed. After completion of departmental enquiry, he again joined his service and worked without any allegation till the date of his superannuation. Thus, after the allegation of embezzlement of fund and completion of departmental enquiry, he performed his duties to the satisfaction of his authorities.

8. Now, the question that requires to be adjudicated



is as to whether a portion of retiral benefit can be withheld by the respondents on the ground of pendency of criminal cases for more than 22 years.

9. Rule 43 of the Bihar Pension Rules, 1950 runs thus:-

*“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this Rule, shall be final and conclusive.*

*[(b) The [Appointment authority of the post held at the time of retirement] further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty*



*of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:*

*Provided that-*

*(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;*

*(i) shall not be instituted save with the sanction of the State Government;*

*(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and*

*(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;*

*(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause*



*(ii) of clause (a): and*

*(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.*

*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.*

*[43(c) 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 the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).]*

*[43(d) if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly:*

*Provided that where Departmental proceedings has been instituted under Rule 19 of Bihar Government Servant Classification, Control and Appeal Rules, 2005 (As amended from time to time) for imposing minor penalties under Rule 14(i) (ii) and (v) of the said rules, payment of gratuity may be made to the government servant.]”*

10. A plain reading of the above provision shows that the provincial government reserves the right of withholding or withdrawing a pension or any part of it, if the petitioner is convicted of serious crime or be held guilty of grave misconduct.

11. Till date, the petitioner was not convicted in any



criminal case, concerning embezzlement of fund. He was also not held guilty of grave misconduct. In the departmental proceeding, only minor penalty of withholding two increments was imposed. It is already recorded that subsequently the petitioner performed his duties till the date of his superannuation satisfactorily.

12. It is needless to say that the pension is deferred portion of compensation for rendering long years of service. It is a hard earned benefit accruing to an employee in the nature of property. It is not a bounty to be disbursed contrary to rules, but very basis for grant of such pension is to facilitate a retired government employee to live with dignity in winter of his life. Such a right cannot be curtailed by way of an executive fiat. Power to curtail pension or any portion thereof must be based on valid ground in accordance with law. Section 43 clearly postulates that pension can be withheld only when a person is convicted or when he is punished for grave misconduct. Till date, the petitioner was not convicted in any criminal case nor punished with grave misconduct. Therefore, the petitioner is entitled to get the remaining amount of his retiral benefits, which was withheld unauthorizably by the respondents.



13. In view of the aforesaid facts and circumstances, the instant writ petition is allowed.

14. The respondent authority is directed to clear the retiral dues to the petitioner, which has been withheld, within a period of four weeks from the date of this order.

**(Bibek Chaudhuri, J)**

skm/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	19.06.2026
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<b>Transmission Date</b>	N/A

