

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.22973 of 2019**

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Chandra Shekhar Prasad (male), aged about 69 years, S/o Late Baldeo Mahto, Resident of Navneet Colony, Rukanpura, Bailey Road, P.O. Bihar Veterinary College, P.S. Rupaspur, District Patna, the retired Additional District Magistrate, Lakhisarai, District Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Special Secretary, General Administration Department, Government of Bihar, Patna.
4. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
5. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
6. The District Magistrate, Lakhisarai.
7. The Treasury Officer, Sinchai Bhawan, Patna.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner	:	Mr. S.B.K. Mangalam, Advocate
For the State	:	Mr. Sheo Shankar Prasad, SC8
For the A.G.	:	Mr. Binod Kumar Labh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 12-04-2021**

Heard Mr. S.B.K. Mangalam, the learned counsel for the petitioner, Mr. Sheo Shankar Prasad, the learned S.C.8, and Mr. Binod Kumar Labh, the learned counsel appearing on behalf of the Accountant General.

2. The petitioner has moved this Court for the following reliefs:-



(i) For issuance of an appropriate writ in the nature of certiorari for quashing the letter dated 29.04.2013 as contained in Memo No.6836, issued under the signature of Deputy Secretary, General Administration Department, Government of Bihar, Patna whereby and whereunder the respondent no.5 was pleased to communicate that in view of two other charges pending against him, the decision would be taken later on for payment of gratuity and unutilized leave.

(ii) For issuance of an appropriate writ in the nature of certiorari for quashing the resolution as contained in Memo No.12081, dated 22.07.2013 whereby the respondent authorities were pleased to withhold 10% pension of the petitioner for his unsatisfactory service under Rule 139 of the Pension Rules but without holding any departmental proceeding in terms of Rule 43(b) of the Bihar Pension Rules.

(iii) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent authorities for payment of leave encashment, gratuity for which the petitioner was entitled on the date of his retirement.

(iv) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent authorities for payment of aforesaid amount of the petitioner with statutory as



well as pendentelite interest on the ground that if the delay in payment is directly and solely attributable to the respondents, the petitioner is entitled to receive the aforesaid payments with interest.

(v) For issuance of any other writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. The facts relevant for disposal of the writ petition are that the petitioner was appointed as the Deputy Collector in pursuance of the recommendation of Bihar Public Service Commission and he joined as Deputy Collector on 19.03.1983. When the petitioner was posted as Sub-divisional Officer, Gogri, the Special District Magistrate vide Letter No.1162, dated 21.09.2007 addressed to the Chief Secretary recommended for taking disciplinary action against the petitioner on different grounds of negligence in arrangements of boats and non-distribution of food grains amongst the flood victims. The petitioner was called upon to show cause vide Letter No.706, dated 27.06.2008 along with the memo of charges issued under the signature of District Magistrate, Khagaria, Annexure-P-2 and P-2/1. The petitioner responded to the charge sheet and submitted his reply vide Letter No.1705, dated 25.08.2008 (Annexure-P-3).



The petitioner continued to serve and he retired on 30.09.2010 as Additional District Magistrate at Lakhisarai. Vigilance Case No.115 of 2009 was registered under different sections of the Indian Penal Code and the Prevention of Corruption Act on 09.11.2009, but no departmental proceeding was initiated. Charges were levelled for purchase of cement against the District Magistrate, Banka and petitioner was also posted as Deputy Collector, Banka and he was also made accused in the case that cement was purchased without constituting a purchase committee. Petitioner retired from his service on 30.09.2010 and he was persuading for payment of his retiral dues but the respondent called upon the petitioner vide Letter No.6809, dated 14.05.2012 (Annexure-P-4) to file his reply to the charges made against him while he was posted as Sub-divisional Officer, Gogri. The petitioner submitted his show cause vide his Letter No.51, dated 06.06.2012 (Annexure-P-5). The respondent after considering the show-cause of the petitioner resolved vide resolution as contained in 12081, dated 22.07.2013 for withholding 10% pension of the petitioner (Annexure-P-6).

4. The District Magistrate, Lakhisarai vide Letter No.714, dated 16.08.2010 forwarded all the papers and the report with regard to payment of 287 days unutilized earned leave to the



petitioner but the unutilized earned leave had not yet been paid. The petitioner again represented for gratuity and unutilized earned leave vide his letter dated 27.02.2013, but the respondent no.5, Deputy Secretary, General Administration Department issued a letter as contained in Memo No.6836, dated 29.04.2013 stating therein that the payment of gratuity and leave salary of the petitioner would be considered only after disposal of vigilance case and the charges regarding vigilance case after disposal of other charges pending against him (Annexure-P-8).

5. Learned counsel for the petitioner submits that from perusal of Annexure-P-6, the order as contained in Memo No.12081, dated 22.07.2013, issued under the signature of Joint Secretary, General Administration Department, Government of Bihar, it would appear that 10% pension of the petitioner has been withheld permanently under Section 139b of the Bihar Pension Rules, 1950 and not under Section 43b of the Bihar Pension Rules, 1950. The petitioner rendered his satisfactory service during his entire service tenure. While the petitioner was posted as Sub-divisional Officer, Gogri, some charges were levelled against the petitioner. The petitioner submitted his reply and petitioner was put under suspension but the department inquiry was not concluded and petitioner was not punished, therefore, on the basis



of pendency of the criminal case or pendency of departmental proceeding even after retirement of the petitioner under Section 43(b) of the Pension Rules, the pension of the petitioner cannot be withheld permanently under Rule 139(b) of the Pension Rules.

6. It is further submitted that by Annexure-P-8, the respondents decides withholding of 10% pension of the petitioner under Rule 139(b) of the Pension Rules. The respondents withheld payment of entire gratuity and unutilized leave of the petitioner as the letter says that no order can be passed for payment of gratuity and unutilized leave encashment during the pendency of the charges and the criminal case. It is further submitted that in view of the provisions as contained in Section 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). The pension includes gratuity, therefore, the amount of 90% gratuity should have been paid to the petitioner. Learned counsel for the petitioner placed his reliance on the judgment of the Hon'ble Supreme Court in the case of Dr. Hira Lal



vs. State of Bihar & Ors. (Civil Appeal No.1677-1678 of 2020, arising out of SLP (C) Nos.4722-4723/2020).

7. The respondents filed counter affidavit and supplementary counter affidavit. Mr. Sheo Shankar Prasad, the learned S.C.8 submits that employer can withhold any amount of pension of an employee under sub-sections (a) (b) and (c) of Rule 139 of the Bihar Pension Rules, 1950. It is further submitted that after careful consideration of provisions of Rule 139 of the Pension Rules, the government decided that the pension sanctioning authority before passing any order regarding reduction in the amount of pension or gratuity or both shall serve upon the person concerned a notice specifying the reduction proposed to be made in such amount and the grounds therefore and call upon such person to submit within 15 days of the receipt or such further time as may be allowed by that authority such representation as person may wish to make against the proposed reduction and take into consideration the representation submitted by such person before passing the final order. It is further submitted that the petitioner was called upon to file his show cause with regard to the charges levelled against him on the decisions of the General Administration Department to withhold his pension. The petitioner filed his show cause and the respondents found the show cause of



the petitioner unsatisfactory. Accordingly, the respondents decided to withhold 10% pension of the petitioner and, therefore, the order as contained in Annexure-6 does not require any interference.

8. Mr. Sheo Shankar Prasad, the learned S.C.8 further submits that the respondents have also decided not to make payment of gratuity and unutilized leave encashment to the petitioner during the pendency of the criminal case pending against the petitioner and the charges levelled against the petitioner, therefore, the order as contained in Memo No.6836, dated 29.04.2013 (Annexure-P-8) is also perfectly right and does not require any interference.

9. Having heard the submissions of both sides, two issues arise for consideration:

(i) Whether the respondents can withhold any part of pension of the petitioner under Rule 139(a), (b) and (c) of Bihar Pension Rules without resorting to any departmental proceeding or without finding the petitioner guilty on any charge levelled against him or without the petitioner having been convicted in any criminal case either during the service tenure or after retirement and the petitioner is having no adverse entry in his service book?

(ii) Whether the respondents can withhold the entire amount of gratuity and unutilized earned leave encashment of the



petitioner on the ground that his 10% pension has been withheld under Rule 139 of the Pension Rules and many charges and criminal cases are pending against him?

10. The government has framed Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, which prescribes procedure for suspension of a government servant, holding of departmental proceeding for inflicting/awarding minor and major punishment. Section 14 of the aforesaid Rules defines the minor and major penalties. Rule 17 defines the procedure to be adopted for holding departmental inquiry in order to inflict or award major punishment if an employee is found guilty of the charges. Rule 19 of the Rules prescribes the procedure and the way for awarding minor punishment to an employee while the employee is in service. Admittedly the petitioner was appointed as Deputy Collector on 19.03.1983 and he served the government in different capacity. He was also promoted to the post of Additional Collector. While the petitioner was posted as Sub-divisional Officer, Gogri, the Special District Magistrate, who was posted there in the event of unprecedented flood, reported that the petitioner committed different irregularities and negligence in discharge of his official duty. On such, memo of charge was framed against the petitioner (Annexure-B) and petitioner was put



under suspension. Neither the petitioner nor the respondents disclosed in his writ petition as well as counter affidavit about the result of the departmental proceeding initiated against the petitioner but the petitioner retired as Additional Collector, Lakhisarai on 30.09.2010, therefore, it is crystal clear that the petitioner was not inflicted any punishment during his service tenure although a departmental proceeding was initiated against the petitioner, but there is nothing on record to show that the same departmental proceeding continued even after retirement of the petitioner under Section 43(b) of the Bihar Pension Rules, 1950.

11. If the petitioner would have been inflicted any major punishment such as dismissal or reduction in rank, stoppage of increments with cumulative effect that would have affected the payment of pension or less payment of pension to the petitioner but the petitioner was never punished during his service in accordance with law.

12. It would be beneficial and relevant to reproduce Rules 43 and 139 of the Bihar Pension Rules for just decision of the two issues involved in the case:

*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.*

*[2] (b) The State Government 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 purpose 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).*

*This will come into force with immediate effect.*

*(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.*

*139. (a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved.*

*(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.*

*(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, or any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.*



13. From perusal of provisions as contained in Section 43(a), it appears that the government reserve the right of withholding or withdrawing of pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. This part speaks about the future conduct of the petitioner. Under Rule 43(b), the State Government reserve the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period on certain condition, 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 such misconduct or negligence, during his service including service rendered on re-employment after retirement. Section 43(b) provides for continuance of the departmental proceeding initiated during service tenure of the employee and also contemplates that if any departmental proceeding is not initiated, the same can be initiated on the serious charge of causing pecuniary loss to the government by the negligence of an employee and such negligence came to the knowledge of the employer within four years of such event even after retirement of such employee, but it appears that vigilance case is lodged being Vigilance Case No.115 in the year 2009 against the petitioner under different sections of the Indian Penal



Code and under different sections of the Prevention of Corruption Act and the same is pending. The departmental proceeding was also initiated while the petitioner was in service but the petitioner was not found guilty in any departmental proceeding. The respondent has not stated about the result of the departmental proceeding even after retirement of the petitioner and, therefore, the pension of the petitioner cannot be stopped under Section 43(b) as none of the conditions mentioned in Section 43 of the Bihar Pension Rules is fulfilled.

14. Section 43(c) which was inserted with the amendment to the Bihar Pension Rules on 19.07.2012 by the Government of Bihar in exercise of the power under Article 309 of the Constitution of India which says that 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). Under this provision, the government or the employer can withhold 10% pension of an employee on the ground of pendency of departmental proceeding or the criminal proceeding but the



respondent has not resorted to the provisions as contained in Section 43(c) of the Pension Rules and withheld 10% pension of the petitioner permanently under Section 139(b) of the Pension Rules. On perusal of Rule 139 of the Pension Rules, it appears that the pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved. Sub-Rule (b) of Rule 139 says that if the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount it thinks proper and Sub-Rule (c) provides that before deducting any part of pension, the authority sanctioning the pension shall issue show cause to the pensioner and after considering the show cause shall pass order in accordance with law.

15. Rule 139 of the Rules speaks about the condition for grant of full admissible pension. The government reserve its right for reduction in the amount of pension, if it thinks proper after perusing the service record of the petitioner. If the service record of an employee is found unsatisfactory only then the authority can pass order reducing the pension of the petitioner but there is a condition that the employee has not rendered satisfactory service only then the pension of such employee can be reduced. It is admitted fact that the petitioner during his entire service tenure has



not been found guilty of any charge. The petitioner was not even inflicted any minor punishments on any action. While the petitioner was posted as Sub-divisional Officer, Gogri, charges were made against him that he was negligent in discharging his official duty and thereby he did not provide boats for rescuing the flood victims and food grains and properly transport the food grains and distribute the same to the flood victims. On that charge, a departmental proceeding was also initiated but the petitioner was never found guilty. Vigilance case was also instituted but the same is still pending and petitioner is not found guilty in any criminal case. Mere institution of FIR and initiation of departmental proceeding cannot be a condition for reducing any amount of pension of a government servant. The employer of the government or the pension sanctioning authority is vested with the power to reduce the amount of admissible pension of an employee, if his service record is found unsatisfactory but since no adverse entry is made in the service record of the petitioner during his entire service tenure and, therefore, Rule 139 does not bestow unbridled/unfettered power or the pension sanctioning authority of any employee to withhold or reduce any amount of pension from the admissible amount of pension to an employee on such vague and speculative that such employee had not rendered satisfactory



services, therefore, I find that the order as contained in Annexure-6 is palpably illegal and not sustainable in the eye of law.

16. So far as non-payment of gratuity and leave encashment during the pendency of the departmental proceeding and criminal cases, the government has brought about amendment to the Bihar Pension Rules in Bihar Pension Rules and Rule 43(d) has been inserted under this provision .The government can withhold the amount of gratuity till the conclusion of the proceeding and criminal case. However, the Rules are not made retrospective and the same is applicable from the date of its being made effective but the gratuity and unutilized earned leave cannot be withheld on the ground that since 10% pension of the petitioner has been reduced under Rule 139(b) of the Pension Rules, therefore, no order can be passed with regard to payment of gratuity and unutilized earned leave encashment till the pendency of the criminal case, therefore, I find that the order as contained in Annexure-8 is also illegal and not sustainable.

17. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service.



The right to receive pension of a public servant has been held to be covered under the “right to property” under Article 31(1) of the Constitution by a Constitution Bench of the Hon’ble Supreme Court in the case of Deokiandan Prasad v. State of Bihar [(1971) 2 SCC 330].

18. Having considered the facts and discussions made above, the writ petition is allowed. The order as contained in Memo No.12081, dated 22.07.2013 (Annexure-P-6) and letter as contained in Memo No.6836, dated 29.04.2013 (Annexure-P-8) are set aside.

19. The matter is remitted to the Principal Secretary, General Administration Department, Government of Bihar, respondent no.2 to pass order afresh with regard to withholding of 10% pension and payment of unutilized earned leave encashment and gratuity to the petitioner taking into consideration the provisions as contained in Section 43 of the Bihar Pension Rules, 1950 within four months from the date of receipt of this order.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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