

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22042 of 2019

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Vijaya Kumari W/o Sri Ashok Kumar Sinha, Resident of New Area, Jakanpur,
P.S. Jakanpur, town and District- Patna. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Administration Cum Additional Secretary, Department of
Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The District Education Officer, Patna.
5. The Principal , Bankipur Girls High School, Patna.
6. The Treasury Officer, Patna.
7. The Accountant General (A and E) Bihar, Patna Respondent/s

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Appearance :

For the Petitioner/s

: Mr. Shiv Kumar, Adv

For the Respondent Accountant General

: Mrs. Nivedita Nirvikar

: Mr. Sudhanshu Shekhar, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-02-2021

Heard the parties.

2. In this application under Article 226 of the Constitution of India, the petitioner has sought for issuance of mandamus against the respondent-authorities directing them to make payment of retiral dues of the petitioner including pension, gratuity and leave encashment etc alongwith compound interest of 18% and cost of litigation.

3. The petitioner was initially appointed as Assistant Teacher in the Govt. Girls Middle School, Nawada where the petitioner joined on 16.03.1981. The petitioner superannuated from the post of Senior Teacher, Bankipur Government Girls High



School, Patna on 30.11.2018. Petitioner asserted that neither any departmental proceeding or criminal proceeding was pending against her till date of superannuation but the authorities are maliciously not paying the retiral dues.

4. Respondent No.2, the Director, Administration-cum-Additional Secretary, Department of Education, Government of Bihar, Patna in his counter affidavit dated 19.08.2020, asserted that in pursuance of a CBI report in the matter of irregularities in appointment of teachers, a departmental proceeding was initiated against the petitioner and charges were served against her before her superannuation. However, 90% of provisional pension and 90% of provisional gratuity was allowed in favour of the petitioner. Prapatra-K was submitted against the petitioner on 19.12.2017, a copy at Annexure-A.

5. Learned counsel for the Accountant General, Bihar informed the Court that pension payment order of 90% pension and gratuity have already been issued in favour of the petitioner and addressed to respondent No.6, the Treasury Officer, Patna, vide letter dated 04.06.2020.

6. The petitioner asserted that the Treasury Officer has not made any payment in pursuance of the aforesaid order. Thereafter, by order dated 04.02.2021, the respondent Nos.5 and 6



were directed to ensure payment to the petitioner within two weeks.

7. In his separate counter affidavit dated 19.02.2021 respondent No.6, the Treasury Officer, Patna, informed the Court that in the departmental proceeding, final order has been passed on 09.10.2020 whereby 100% pension of the petitioner was stopped forever as punishment. For the aforesaid reason, payment to the petitioner of gratuity or leave encashment etc has not been made.

8. Evidently, there is no reason to withhold the pension of the petitioner to any extent from the date of retirement till the date of punishment in absence of specific direction in the order of punishment that punishment would be effective from the date of retirement.

9. Likewise, no amount of gratuity of the petitioner could have been withheld after incorporation of Rule 43(c) in the Bihar Pension Rules with effect from 19.07.2012 as held by a Full Bench of this Court in **Arvind Kumar Singh Vs. State of Bihar**, reported in **2018(2)PLJR 933**. In **Arvind Kumar Singh Case (Supra)**, the Full Bench said that in absence of any statutory provision, the Government is within its power to withhold leave encashment. Since there is no order of withholding of leave encashment in the order of punishment passed in the departmental



proceeding, the petitioner would be entitled for leave encashment also. Therefore, respondents are directed to make payment of full leave encashment, full gratuity to the petitioner.

10. The respondents are further directed to make payment of full pension in favour of the petitioner from the date of her superannuation on 30.11.2018 till before the date of punishment dated 09.10.2020. This order be complied within two months.

11. Respondent No.6 has not submitted any acceptable reason for not complying with payment order issued by the Accountant General on 04.06.2020 nor the Treasury Officer was authority to sit over the matter till clarification and other instructions from other authority. Hence, Treasury Officer, Patna is saddled with cost of Rs.20,000/- for harassment caused to the petitioner due to his inaction. The cost to be paid within two months, failing which it would be recovered as fine from the Treasury Officer, Patna.

12. With the aforesaid observation and direction, this writ application stands disposed off.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2021
Transmission Date	

