

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 5156 of 2016**

Anil Kumar Sinha, son of Late Ramakant Prasad, resident of Mohalla- Birsa Nagar, Road No.4, House No. 211, P.O. Hatia, P.S. Jagannathpur, Town and District- Ranchi

... Petitioner

-Versus-

1. The State of Jharkhand through its Secretary/Principal Secretary, School Education and Literacy Department, having office at MDI Building, Dhurwa, P.O. & P.S. Dhurwa, Town & District- Ranchi
2. The Director, Secondary Education, School Education and Literacy Department, having office at Secondary Education Directorate, MDI Building, Dhurwa, P.O. & P.S. Dhurwa, Town & District- Ranchi

... Respondents

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

For the Petitioner : Mr. Manoj Tandon, Advocate

For the Respondent-State : Mr. Abhijeet Kumar, A.C. to S.C.-II

05/29.05.2020. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Abhijeet Kumar, learned counsel for the respondent-State.

This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

The petitioner has preferred this writ petition for quashing the part of the order contained in Memo No. 12/Mu.12-12/2015-297/Ranchi dated 16.02.2016.

Mr. Manoj Tandon, learned counsel for the petitioner submits that by the impugned order dated 16.02.2016, the payment of leave encashment (earned leave) has been withheld after the retirement of the petitioner by respondent no.2. He further submits that the petitioner had earlier moved this Court by way of filing W.P.(S) No. 2608 of 2015, which was disposed of vide order dated 23.06.2015. He also submits that when that order was not complied with by the respondents, the petitioner was compelled to file Contempt Case (Civil) No. 658 of 2015, which was disposed of on 31.03.2016. He further submits that the petitioner retired on 30.04.2014 from the post of Clerk in the office of the

Secondary Education Directorate, Government of Jharkhand, Ranchi after rendering almost 34 years of service. When the retirement benefits was not paid to the petitioner, he was compelled to file aforementioned writ petition. The said writ petition was disposed of with direction to respondent no.2 to take a decision on the claim of the petitioner and pay the admissible post retiral benefits and arrears of salary to the petitioner without any unreasonable delay. When that order was not complied with by the respondents, the petitioner was compelled to file aforementioned contempt civil case. In the said contempt case, respondent no.2 filed a show-cause reply, wherein, it had been stated that vide order dated 16.02.2016, respondent no.2 has directed for payment of retirement benefits to the petitioner, however amount of leave encashment has been withheld. In this writ petition, part of the the said order dated 16.02.2016 has been challenged by the petitioner, which is annexed at Annexure-2 to this writ petition.

Mr. Manoj Tandon, learned counsel for the petitioner further submits that during entire career of the petitioner, no departmental proceeding was ever initiated against the petitioner. Even after his retirement, no departmental proceeding was initiated against him. Neither during the service period nor after his retirement, there is any criminal case pending against the petitioner. He further submits that the amount of leave encashment cannot be withheld by the State Government without finding any guilt against the petitioner. He also submits that Rule 43 of the Bihar Pension Rules provides the withholding of the pension amount only when the pensioner is found to be guilty of grave misconduct, in the departmental or judicial proceedings. He further submits that the case of the petitioner is fully covered by the Full Bench judgment of this Court in the case of ***Dr. Dudh Nath Pandey v. State of Jharkhand***, reported in ***2007 (4) JCR 1 (Jhr.) (FB)***.

Paragraphs 17 and 21 of the said judgment are quoted herein below:

"17. The various guidelines which have been given by the decisions, referred to above, are as follows:

- (i) *The conditions precedent for imposing penalty of withholding pension is that there should be a finding in departmental enquiry or judicial proceeding that the pensioner committed grave misconduct in the discharge of his duty while in office.*
- (ii) *Before the power under Rule 43(b) can be exercised in connection with alleged misconduct of the retired Government Servant, it must be shown that in departmental proceeding or judicial proceeding, the concerned Government servant has been found guilty of grave misconduct.*
- (iii) *Unless the pensioner is found guilty of misconduct in departmental or judicial proceeding any part of his pension cannot be withheld.*
- (iv) *The employee's right to pension is a statutory right. The measure of deprivation of his pension must be commensurate with the gravity of misconduct as it offends the right to assistance as framed under Article 41 of the Constitution.*
- (v) *The pensionary dues payable to the employees including gratuity which is also pension within the meaning of Bihar Pension Rules cannot be withheld. Similarly, leave encashment cannot also be withheld since that is paid in lieu of unutilized leave as it partakes the character of salary.*
- (vi) *The power under Rule 43(b) cannot be exercised before the pensioner is found in departmental or judicial proceeding guilty of grave misconduct.*
- (vii) *The bare reading of the Rule 43(a) of the Bihar Pension Rules would make it evident that the power to withhold or withdraw pension is permissible only when the pensioner is found to be guilty of grave misconduct and not that during the pendency of such proceedings.*

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21. *Therefore, we are to hold while answering the first question that the Government has no power to withhold pension or gratuity on the ground of pendency of judicial or departmental proceedings and there is no power at all for the State Government to withhold the leave encashment under Rule 43(b) at any stage."*

Learned counsel for the respondent-State submits that although earlier on several dates, time was allowed, but he has not been able to file counter affidavit. He further submits that on 18.11.2017, submission was made before the Bench that the statement of facts has already been received and on that day last chance was allowed for filing counter affidavit. He further submits that on the law point with regard to withholding of leave encashment, he is not in a position to distinguish the Full Bench judgment of this Court.

In view of the above facts and considering the submission of the learned counsel for the petitioner as well as the respondent-State, this Court finds that the case of the petitioner is fully covered by the Full Bench judgment passed by this Court in the case of Dr. Duh Nath Pandey (*supra*). The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental or criminal proceeding. The power of withholding leave encashment is not provided under the rule to the State irrespective of the result of any proceedings. The case of the petitioner is fortified as there is no departmental or criminal proceeding against the petitioner. Thus, part of the impugned order dated 16.02.2016 cannot sustain in the eyes of law. Accordingly, part of the order withholding the amount of leave encashment of the petitioner dated 16.02.2016 is, hereby, quashed. Respondent no.2 is directed to release the amount of leave encashment to the petitioner within a period of six weeks from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction, this writ petition stands allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

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