

HIGH COURT OF PATNA**Bench: Honourable Mr. Justice Nani Tagia****Date of Decision: June 21, 2024**

Case No.: Civil Writ Jurisdiction Case No. 16108 of 2023

Petitioner:**Jai Jai Ram Roy****VS****Respondents:****The State of Bihar.****The Additional Chief Secretary, Education Department, Government of Bihar, Patna.****The Director (Administration)-cum-Additional Secretary, Education Department, Govt. of Bihar, Patna.****The District Magistrate, Sitamarhi.****The District Education Officer, Sitamarhi.****The Accountant General, Bihar, Patna.****Legislation:**

Rule 43(b) and 43(c) of the Bihar Pension Rules, 1950

Subject: The petitioner, Jai Jai Ram Roy, retired on 31.07.2020 as a Programme Officer in the Education Department and sought a direction for the release of his remaining 10% pension and 10% gratuity withheld by the respondent authorities.

Headnotes:

Pension and Gratuity – Withholding of Retirement Benefits – Rule 43(b) and 43(c) of the Bihar Pension Rules, 1950 – Petitioner retired without any pending departmental or criminal proceedings – Withholding 10% of pension and gratuity deemed illegal in absence of such proceedings – Writ petition allowed directing respondents to pay withheld amounts [Paras 2-19].

Procedural Fairness – Requirement of Pending Proceedings – Rule 43(b) and 43(c) stipulate withholding only if proceedings are pending – Respondents failed to show any ongoing departmental proceedings – Court emphasizes

strict adherence to procedural fairness in withholding pension and gratuity [Paras 13-16].

Decision:

Writ petition allowed – Respondents directed to pay the petitioner the remaining 10% of pension and gratuity along with arrears forthwith.

Referred Cases:

- Md. Ejaaz Ahmad and ors. V. State of Bihar and ors., C.W.J.C. 11447 of 2018
- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681

Representing Advocates:

For the Petitioner: Mr. Alok Kumar, Advocate; Mr. Pranav Kumar, Advocate

For the State: Mr. Subhash Chandra Mishra, SC-16; Mr. Madhukar Mishra, AC to SC-16

For the Accountant General, Bihar: Mr. Arun Kumar Arun, Advocate

JUDGMENT

Date : 21-06-2024

Heard Mr. Alok Kumar, learned counsel appearing on behalf of the petitioner; Mr. Madhukar Mishra, learned AC to SC-16 appearing on behalf of the State and Mr. Arun Kumar Arun, learned counsel appearing on behalf of the Accountant General, Bihar.

2. The petitioner, who retired on 31.07.2020 on attaining the age of superannuation from the post of Programme Officer, Education Department, has filed this writ petition seeking a direction to the respondent authorities to pay the remaining retirement benefits of the petitioner, i.e., 10% pension and 10% gratuity, which has been withheld by the respondents without any reason and without there being any pendency of departmental proceeding or criminal proceeding against the petitioner.

3. On retirement of the petitioner on 31.07.2020 from the post of Programme Officer, Education Department, respondent no.3- the Director (Administration)-cum-Additional Secretary, Education Department, vide

letter no. 2/Pen5- 36/2020/414, written to the Principal Accountant General (Accounts and Estate), had sanctioned 90% of the petitioner's pension and gratuity, respectively.

4. Pursuant thereto and on further issuance of pension payment order by the Accountant General, Bihar, the petitioner has received 90% of gratuity and is receiving 90% of the pension.

5. The grievance of the petitioner in this writ petition is that he is entitled to receive 100% pension and gratuity since no departmental proceeding or criminal proceeding is pending against the petitioner.

6. The contention of the petitioner is that as per Rule 43(b) and 43(c) of the Bihar Pension Rules, 1950, 10% of the pension as well as gratuity can be withheld by the respondent authorities only when there is a departmental proceeding pending against the retired employee. Learned counsel for the petitioner submits that since there is no departmental proceeding pending against the petitioner, withholding of 10% of the petitioner's pension and gratuity by the respondent authorities is illegal and accordingly respondents are liable to be directed to pay the remaining 10% of the pension as well as gratuity to the petitioner.

7. The respondents have contested the case by filing three sets of counter affidavits, 1st by Naresh Kumar, under-Secretary, Education Department, 2nd by respondent no.5 the District Education Officer, Sitamarhi and 3rd by respondent no.6- the Accountant General, Bihar, Patna.

8. Though, in the counter affidavit filed by Naresh Kumar, under-Secretary, Education Department, it has not been indicated that on behalf of which respondent the said counter affidavit has been filed, but Mr. Madhukar Mishra, learned counsel representing the respondent nos. 1 to 5 has submitted that the counter affidavit filed by Naresh Kumar, under-Secretary, Education Department is on behalf of the respondent no.3, who happens to be the disciplinary authority of the petitioner, while the petitioner was in service holding the post of Programme Officer.

9. Taking the counter affidavit filed by Naresh Kumar, under-Secretary, Education Department to have been filed on behalf of the respondent no.3 as submitted by the learned State counsel as above, the respondent no.3 in paragraph nos. 10, 11, 12 and 13 has stated as under:

"10. That so far as the grievance of the petitioner for making payment of balance 10% pension and 10% gratuity is concerned, in this regard, it is humbly submitted due to pendency of charge against the

petitioner regarding forwarding the selection list of four general caste volunteers of Muslim community to the district against the guidelines in the selection of Talimi Makraj Education volunteers.

11. That in view of abovefactual and circumstances, it is humbly submitted that as soon as the necessary decision is taken on the levelled charge against the petitioner, immediately thereafter, consequential action/steps will be taken in accordance with law.

12. That apart from above, it ishumbly submitted that petitioner has claimed for his exoneration from the charges relying upon judgment and order dated 27.07.2022 passed in CWJC No. 11447 of 2018 (vide Annex-P/6).

13. That with regards to above context, it is humbly submitted that the State of Bihar being aggrieved by and dissatisfied with the judgment and order dated 27.07.2022 passed in CWJC No. 11447 of 2018 has already preferred an appeal before Division Bench of this Hon'ble Court bearing LPA NO. 805 of 2022 which is still pending for adjudication hence, the contention of the petitioner is denied as misconceived.”

10. The respondent no.5 in the counter affidavit filed, in paragraph nos. 5 to 11 has stated as under which is reproduced hereinbelow:

“5. That it is to be humbly submitted that while the petitioner was posted as Block Education Officer, Runnisaipur, Sitamarhi a charge memo was drawn against the petitioner and the same was forwarded to the disciplinary authority vide letter no. 534 dated 11.06.2020.

6. That the articles of charges as contained in chargesheet dated 09.06.2020 alleged that while the petitioner was posted as Block Education Officer, Runnisaipur, Sitamarhi, petitioner forwarded the names of 4 candidates of Muslim general category as against the Reserve Post of Extremely Backward Muslim community to be appointed as volunteer teacher in Taleemi Markaz.

7. That after submission ofwritten statement of defense by the petitioner, the disciplinary authority vide letter no. 598 dated 13.12.2021 and through its reminder bearing letter no. 394 dated 30.06.2022 called for report from the District Education Officer, Sitamarhi so as to ascertain as to whether the articles of charge framed in the charge sheet are of serious nature or not and whether any financial irregularity is involved in the matter or not.

8. That in pursuance to that,letter bearing no. 2298 dated 08.08.2022 has been sent by the District Education Officer, Sitamarhi

(hereinafter referred as DEO) to the Director (Administration), Education Department wherein it has been stated that an investigation has been conducted by the District Programme Officer (Literacy) and report has been submitted to the DEO vide letter no. 685 dated 06.07.2022.

9. *That the District Programme Officer (Literacy) vide letter no. 685 has submitted that the petitioner vide letter no. 1129 dated 17.12.2014 has sent the selection list of general category volunteer teachers (Taalemi Markaz) which was provided to him by the Managing Committee. In pursuance to the petitioner's recommendation payment of general category volunteer teacher (Taalemi Markaz) was made.*

10. *That a letter bearing no. 87 dated 17.02.2023 has been sent by the Director (Administration) to the DEO wherein a report has been asked from the DEO in light of the letter received from the petitioner in which he has claimed that the Hon'ble Patna High Court in the case of Md. Ejaaz Ahmad and ors. vs. State of Bihar and ors. C.W.J.C. 11447 of 2018 vide judgement dated 27.07.2022 has validated the appointment of the volunteer teachers (Taalemi Markaz) who were recommended by the petitioner.*

11. *That a letter bearing no. 823 dated 21.03.2023 has been sent by the DEO to the Director (Administration) wherein it has been mentioned that the District Programme Officer (Secondary Education and Literacy) vide his letter no. 189 dated 02.03.2023 has submitted that a LPA no. 805 of 2022 has been filed by the State of Bihar against the judgement of Ejaaz Ahmed and ors. vs. State of Bihar and Ors. CWJC NO. 11447 of 2018. Moreover, it has been submitted that no order has been received from the Directorate level regarding this very matter."*

11. The respondent no.6- the Accountant General, Bihar in the counter affidavit has stated that pursuant to the sanction letter no. 414 dated 21.06.2021 issued by the respondent no.3- the Director (Administration)-cum-Additional Secretary, Education Department, Govt. of Bihar, Patna sanctioning 90% of the provisional pension and gratuity respectively of the petitioner, the respondent no.6 had issued pension payment order by the office authority No. 02/PEN090721022933/20211101234P0 dated 05.08.2021.

12. On perusal of the averments made by the respondent nos. 3 and 6 in the counter affidavit filed, as extracted hereinabove, it appears that there is an allegation against the petitioner of forwarding the select list of four general caste volunteers of Muslim community against the guidelines for

selection of Talimi Makraj Education volunteers. As regards such forwarding of the select list of four general caste volunteers of Muslim community by the petitioner against the guidelines regarding selection of Talimi Makraj Education volunteers, the various authorities of the Education Department appears to have made communication with each other regarding the course of action or further action to be initiated/ taken against the petitioner.

13. Though there is a narration of exchange of communication between the various authorities of the education department as regards the allegation against the petitioner and the further action to be initiated/taken against the petitioner, but the counter affidavit does not indicate that any departmental proceeding has been initiated against the petitioner for the allegation levelled against him. In the absence of any such categorical averments made by the respondent nos. 3 and 5 in the counter affidavit filed to the effect that departmental proceeding against the petitioner was initiated and the same is under pending consideration, learned counsel for the respondent-State was granted time to file supplementary affidavit on two occasions i.e. on 19.02.2024 and 05.04.2024 to enable the State authorities to apprise this Court by way of supplementary affidavit that if there is any departmental proceeding pending against the petitioner.

14. Despite granting of such opportunities to the State authorities to apprise this Court regarding pendency of any departmental proceeding against the petitioner, the State authorities have not filed any such supplementary affidavit indicating that any departmental proceeding is pending against the petitioner.

15. Learned counsel representing the respondent nos. 1 to 5 has also not disputed the contentions raised by the petitioner that in terms of Rule 43(b) and 43(c) of Bihar Pension Rules, 1950, 10% of the pension and gratuity can only be withheld by the respondent authorities when there is a departmental proceeding pending against the retired employee.

16. It, therefore, is an admitted position that under Rule 43(b) and 43(c) of the Bihar Pension Rules, 1950, the respondent authorities/employer is empowered to withhold 10% of the pension or gratuity of the retired employee(s), against whom the departmental proceeding is pending. In the instant case, the respondent authorities are found to have not indicated in the counter affidavit filed that any departmental proceeding is pending against the petitioner.

17. In that view of the matter, I am of the considered view that this writ petition has to succeed by holding that the withholding of 10% of the pension and gratuity of the petitioner is without any authority of law.

18. For the reasons discussed hereinabove, this writ petition is allowed and the respondents are directed to pay the petitioner the remaining 10% of the pension and gratuity along with arrears, if any, which have been withheld by the respondents forthwith.

19. The writ petition is disposed of with the above directions.

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