

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2429 of 2015

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Sri Staya Narain Sahni Son of Late Fakira Sahni Resident of Mohalla -
Senapat Lalbagh, Police Station - Darbhanga Town, District - Darbhanga.
..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Darbhanga.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. District Magistrate, Darbhanga.
4. Sub-Divisional Officer, Sadar, Darbhanga.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Tewary, Advocate.
Md. Qaisar Raza, Advocate.

For the Respondent/s : Mr. Arvind Kumar, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 10-03-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1.(i) For issuance of a writ in the nature of mandamus for commanding and directing the respondents to make the payments of retiring pension within the terms of Rule 74(b)(i) of the Bihar Service Code which makes provisions for taking voluntary retirement of a Government servant and for grant of retirement benefits."

3. Learned counsel for the petitioner has submitted that once the petitioner had availed the benefit under Rule 74(b)(i) of the Bihar Service Code laying down the provision of voluntary retirement vide his application dated 01.06.2014, the respondents had no jurisdiction to withhold the payment of retirement benefits including pension.

4. On 09.02.2015, when similar arguments were made,



this Court had directed the learned counsel for the State to take instruction and file counter affidavit. This Court infact had proceeded on an assumption that the voluntary retirement of the petitioner had already been allowed and, therefore, it had also directed the learned counsel for the State to take instruction from the Finance Commissioner as to why there should not be a separate speedier mechanism for dealing with the cases of payment of retirement benefit to the employees who take voluntary retirement.

5. Today, though no counter affidavit has been filed by the learned counsel for the State but on the basis of statement of facts received by him from the Collector of the Darbhanga District, he has submitted that a departmental proceeding against the petitioner was pending in view of memo of charge dated 10.09.2013. Additionally, the Collector of Darbhanga District has also in his statement of facts enclosed an order dated 31.10.2014 informing the petitioner that the request of the petitioner for acceptance of his voluntary retirement had not been allowed and any decision with regard to his prayer for voluntary retirement, could be taken only after disposal of the departmental proceeding.

6. It is thus really unfortunate for this Court to note that these facts, specially with regard to pendency of the departmental proceeding as also refusal of the request of the petitioner for

voluntary retirement was withheld by the petitioner when he had filed this writ application on 06.02.2015. Today, when this question of suppression of aforesaid relevant facts by the petitioner has been put to the learned counsel for the petitioner, he has come out to explain that the petitioner is now in process of filing of a fresh writ application questioning the initiation of departmental proceeding as also refusal of his voluntary retirement.

7. In the considered opinion of this Court, once these facts becomes admitted that the voluntary retirement of the petitioner had not been allowed by the respondents and an order to this effect had already been passed way back on 31.10.2014, there would be no question of directing the authorities to pay the post retirement benefit to the petitioner because he has not retired as yet and is still continuing in his service. The petitioner in fact cannot escape from ongoing departmental proceeding having some very serious charges against him.

8. In that view of the matter, this writ application, for the reasons indicated above, must be and is hereby dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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