IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.35 of 2011

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Dr. Anwar Karim Mallick S/O Late Fazal Karim Resident Of Flat No.151, Grand Apartment, Fraser Road, P.S- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner-Cum-Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. Deputy Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
3. The Joint Secretary, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Sinha

For the Respondent/s : Mr. Prabhat Kr Verma AAG 5

Mr. Suman Kumar Jha, AC to AAG 5

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CORAM : HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

4 21-01-2015 The petitioner joined the medical service of the Government of Bihar in the year 1971 as a Medical Officer. He attained the age of superannuation on 31st January, 2003, and accordingly retired from service. After the petitioner retired from service, a show cause notice was issued on 23rd September, 2005, wherein two charges; one relating to unauthorized absence from service from 05.08.1997 to 24.09.2002, and the other, regarding over expenditure, as pointed out in the Audit

Report for the year 1999-2000, were framed. The petitioner submitted his explanation. Not satisfied with the same, the disciplinary authority appointed an enquiry officer. A report, dated 15th June, 2006, was submitted by the enquiry officer holding that the first charge alone was proved. The petitioner was issued a show cause notice proposing punishment. On a consideration of the same, the disciplinary authority passed an order, dated 26th July, 2010, imposing the punishment, in the form of 50% cut in pension. The said order is challenged in this petition.

The petitioner submits that he applied for leave for the period from 1997 to 2002, and once he has been permitted to join the duty there was no basis for framing charge in relation thereto. He contends that the absence was necessitated to get his wife treated.

The respondents filed a counter affidavit opposing the writ petition. It is stated that the absence of the petitioner was unauthorized, and accordingly suitable punishment was imposed.

Heard Sri Shailendra Kumar Sinha, learned counsel for the petitioner, and Sri Prabhat Kumar Verma, AAG 5, learned counsel for the respondents.

Though an objection is raised as to the very right of the respondents to initiate disciplinary proceedings after the retirement of the petitioner. The relevant service rule makes it permissible for the respondents to initiate disciplinary proceedings even after retirement of an employee, provided the enquiry is in relation to an allegation, referable to the period not exceeding three years preceding the retirement. From that angle the enquiry into first charge cannot be faulted. Hence the objection cannot be entertained.

It is true that the absence of the petitioner for five years was found to be unauthorized. However if the respondents were of the view that the said absence amounts to misconduct, they ought not to have permitted the petitioner to join the duty. Once the petitioner was permitted to join the duty, the gravity of the charge gets reduced to a substantive extent.

It is fairly well known that the pension is a form of a return, for the services rendered by an emlployee, and in a way it represents his savings so that it can be made available to him after the cessation of employment and payment of salary. Any cut into the pension can be effected only when there exists substantial cause for it. Cut of 50 % of pension would cause serious hardship to the petitioner. For rest of his life, he has to put up with the limited resources.

This Court is of the view that the reduction of pension to the extent of 10 % would meet the ends of justice.

Hence, the writ petition is partly allowed modifying the order of punishment, dated 26th July, 2010, to the effect of reducing the cut in pension of the petitioner herein to the extent of 10%. There shall be no order as to costs.

Interlocutory applications, if any, shall also stand disposed of.

(L. Narasimha Reddy,CJ)

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