

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12149 of 2015

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Baxi Kishori Raman Prasad Sinha, retired Psychiatrist, P.M.C.H., Patna, resident
of Mohalla- Riding Road, Sheikhpura More, Police Station- Shastri Nagar,
District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Health, Patna
2. The Commissioner-cum-Secretary, Department of Health, Government of Bihar, New Secretariat, Patna
3. The Additional Secretary, Department of Health, Government of Bihar, New Secretariat, Patna
4. The Director-in-Chief, Department of Health, Government of Bihar, New Secretariat, Patna
5. The Accountant General, Birchand Patel Marg, Patna
6. The Deputy Secretary, Department of Health, Government of Bihar, New Secretariat, Patna
7. The Secretary, Department of Health, State of Jharkhand at Ranchi
8. The Principal Secretary, Grievance Committee, Department of Health, Government of Bihar, New Secretariat, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P.Sinha, Sr. Advocate
	:	Mr. Rahul Nath, Advocate
For the State	:	Mr. Ram Babu Rai, A.C. to S.C.-14
For the A.G., Bihar	:	Mr. Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 06-02-2017

The present writ application has been filed by the petitioner
for commanding the respondents to grant and pay post retiral benefits



i.e. 10% of the pension, entire gratuity with interest and cost etc.

2. It is submitted by Mr. Baxi S.R.P.Sinha, learned Senior Counsel for the petitioner that the petitioner was a member of Bihar Health Service. After serving for about 27 ½ years in different capacities, he finally retired on 30.09.2004. At the time of superannuation, he was posted as Psychiatrist in Patna Medical College Hospital, Patna.

3. After retirement, he submitted his pension papers and other documents for fixing and paying his pension and other post retiral dues like gratuity, general provident fund etc. When nothing was paid towards his post retiral dues, he filed a writ application bearing CWJC No. 15928 of 2005 before this Court for payment of post retiral dues. In the said writ application, a counter affidavit was filed in which it was mentioned that due to irregular purchase of medicine from M.S.D. Calcutta, his 90% pension only has been released.

4. It is submitted by the learned Senior Counsel for the petitioner that, during the pendency of the aforesaid writ application, the petitioner has been paid all his post retiral dues except 10% of the pension and the entire sum under the head gratuity.

5. Mr. Sinha submitted that though the petitioner retired on 30th September, 2004, a proceeding under the Bihar Pension Rules



was initiated against him on 28th January, 2006 for the alleged illegal purchase of medicine by the petitioner as the Superintendent of Ranchi Mansik Arogyashala from where he was transferred on 04.06.1994. He submitted that the alleged purchase was obviously earlier to the aforesaid 04.06.1994 whereas the proceeding against the petitioner was initiated on 28th January, 2006 after his retirement on 30th September, 2004.

6. He submitted that the petitioner challenged the aforesaid departmental proceeding by filing writ application vide CWJC No.3066 of 2006 before this Court contending therein that the proceeding was contrary to the provision prescribed under Rule 43(b) of the Bihar Pension Rules, 1950. The said writ application was dismissed by this Court in absence of the counsel on 24th June, 2009.

7. It is submitted by Mr. Sinha, learned Senior Counsel for the petitioner that the enquiry against the petitioner prolonged for over ten years since the date of its initiation and till date no final order has been passed by the disciplinary authority despite the fact that the enquiry proceeding has virtually come to an end as back as on 29th February, 2016. He submitted that during the entire proceeding neither any oral nor any documentary evidence has been produced by the department against the petitioner. He submitted that simply by initiating an inquiry after retirement of the petitioner, the respondents



cannot withhold 10% of the pension and the entire gratuity of the petitioner for an indefinite period.

8. Learned counsel for the State failed to assign any reason for the inordinate and unexplained delay in concluding the disciplinary proceeding whereas learned counsel for the Accountant General, Bihar, Patna submitted that repeated requests were made to the Health Department to make available the requisite sanction order for payment of remaining 10% pension and gratuity by the Accountant General, Bihar, Patna, but the reply of the State Government is still awaited. He submitted that unless the Health Department sanctions 10% pension and gratuity of the petitioner, the Accountant General, Bihar, Patna cannot authorize the amount for payment.

9. I have heard learned counsel for the petitioner and perused the record.

10. The petitioner had earlier approached this Court vide CWJC No.3066 of 2006 and this Court had declined to interfere with the memo of charge initiating a departmental proceeding at that stage. The order passed by this court in the aforesaid writ petition reads as under:-

“No one appears on behalf of the petitioner and the State of Bihar.

This writ application has been filed for



quashing of an order dated 28.1.2006 whereby and whereunder a departmental proceeding in terms of Rule 43(b) of the Bihar Pension Rules has been initiated.

In view of the fact that the charges framed against the petitioner are grave and serious in nature and that the petitioner will still have the liberty to raise all questions after conclusion of the departmental proceeding, this Court for the time being is not inclined to interfere with the memo of charge initiating a departmental proceeding.

That being so, this court would dismiss this application by giving an opportunity to the petitioner to raise any point which has been taken in this writ application if and when an order of punishment is passed against him.

With the aforementioned observation, this application is dismissed.

11. Since the order passed by the writ court was not carried before the Division Bench in appeal, at this stage, I am not passing any positive order directing the respondents to make payment of 10% of the pension and gratuity to the petitioner. However, taking into consideration the inordinate and unexplained delay in conclusion of the proceeding against the petitioner, I direct the respondents to dispose of the inquiry proceeding against the petitioner by passing a reasoned order within a period of six weeks from the date of



receipt/communication of this order failing which the inquiry against the petitioner initiated under Rule 43(b) of the Bihar Pension Rules shall be deemed to have been quashed and in that eventuality the respondents shall pay 10% of the pension and the entire gratuity to the petitioner without any further delay.

12. In case, final order passed by the disciplinary authority goes against the petitioner, the petitioner would be at liberty to challenge the same and raise all the points available to him raised before this Court either in the present writ application or in CWJC No.3006 of 2006.

13. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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