

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1104 of 2016

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Nandu Prasad, Son of Late Fakira Sao, Resident of Tikiya Toli, P.S. : Khajekalan,
P.O. Jhauganj, Patna City, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar.
2. Principal Secretary, Department of Health, Government of Bihar, Patna.
3. Bihar Nurses Registration Council through its President, Vikash Bhawan, New Secretariat, 3rd Floor, Room No. 330A, Bailey Road, Patna.
4. Director-in-Chief, Health Services, Bihar cum President, Bihar Nurses Registration Council, Vikash Bhawan, New Secretariat, 3rd Floor, Room No. 330A, Bailey Road, Patna.
5. Registrar, Bihar Nurses Registration Council, Vikash Bhawan, New Secretariat, 3rd Floor, Room No. 330A, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Mr. Om Prakash Kumar and Mr. Sunil Kumar, Advocates
For the State	:	Mr. Ram Vinay Prasad Sinha, A.C. to G.A. XII
For the Respondents No. 3 to 5 :	:	Mr. Prabhat Kumar Singh and Mr. Ranjan Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the petitioner; State and
respondents no. 3 to 5.

2. The petitioner has claimed payment of post retiral
dues like Gratuity, Pension, Leave Encashment etc.

3. The basic issue involved is whether the petitioner,
who superannuated from the post of Clerk, from the office of
respondent no. 3 on 31.08.2010, is entitled to retiral benefits, for



which initially he represented before the respondent no. 4, but later on has moved the Court in the present writ application when such benefit was denied to him by a decision taken by the respondent no. 3 on 06.11.2015.

4. Learned counsel for the petitioner submitted that the service conditions of persons employed under the respondent no. 3 is governed by the decision of the respondent no. 3 under the Bihar and Orissa Nurses Registration Act, 1935. It was submitted that in terms of such power, earlier in the case of a similarly situated employee, Bishambhar Thakur, upon his superannuation, the respondent no. 3 took a decision to grant him retiral benefits in terms of what was payable by other Medical Councils to their employees. Learned counsel submitted that the Homeopathic Medical Board and the State *Ayurvedic* and *Unani* Medical Council have granted retiral benefits at par with those payable and admissible to Government employees. It was further submitted that once a decision has been taken in the case of a similarly situated person, the benefit to the petitioner cannot be denied. Learned counsel submitted that even the financial liability is not much as there are only three or four employees working under the respondent no. 3 and, thus, the post retiral benefits ought to be paid to the petitioner.

5. Learned counsel for respondents no. 3 to 5 submitted



that learned counsel for the petitioner has rightly stated that the power to decide with regard to the service condition including such payment vests with the respondent no. 3 and till date, there is no decision taken to grant such benefit to the petitioner and rather a decision was taken not to pay the retiral dues, as claimed by the petitioner, in the meeting held on 06.11.2015. Learned counsel submitted that no payment was made to Bishambhar Thakur in terms of the resolution taken by the respondent no. 3, due to which he had moved the Court in C.W.J.C. No. 3800 of 1996, which came to be dismissed by a Bench of this Court by order dated 08.03.2000. It was, thus, submitted that the said decision in the case in Bishambhar Thakur was never implemented by the respondent no. 3 and such decision has now become redundant in view of there being no interference by the Court in the matter and rather the Court had observed that Bishambhar Thakur was at liberty to agitate his grievance before any other appropriate authority. It was submitted that none of the employees of the respondent no. 3 are being given these benefits and uniformity is being maintained and the petitioner having joined the services being fully aware of the conditions prevailing and the decisions of the respondent no. 3 and also the fact that no post retiral benefits were being paid, cannot now claim, as a matter of right, such payment.



6. Learned counsel for the State submitted that twice earlier the petitioner had moved the Court for the same relief and the writ petition came to be dismissed as withdrawn with liberty to pursue the matter before the respondent no. 3. He draws the attention of the Court to Annexures-8 and 10, which are copies of orders passed in the two writ petitions i.e., C.W.J.C. No. 12026 of 2011 dated 05.08.2011 and C.W.J.C. No. 23522 of 2013 dated 07.12.2015. Learned counsel further submitted that thereafter the respondent no. 3 has taken a decision on 06.11.2015 refusing such payment.

7. Having considered the matter, the Court is unable to interfere in the matter. Admittedly, the terms and conditions of service of the petitioner are governed by the decisions of the respondent no. 3. Since, consciously, a decision has been taken not to grant post retiral benefits of Pension, Gratuity and Leave Encashment, the Court cannot direct for such payment or for the respondent no. 3 to take such decision in favour of the petitioner. As far as the case of Bishambhar Thakur is concerned, the Court finds that there cannot be any comparison, for the reason, that first of all it was the decision specifically with regard to Bishambhar Thakur and thereafter also the same was not implemented and challenge to the same was rejected by the Court earlier and the same has attained



finality and the position today is that uniformly the respondent no. 3 is not extending any post retiral benefits to any of its employees. It being totally in the domain of respondent no. 3 to take a decision, the role of the Court in judicial review is limited to the decision making process and not the merits of the decision. Once, the law is clear that the respondent no. 3 has an absolute discretion in the matter, the decision taken by it cannot be faulted on the parameters of settled principles of law.

8. For the reasons aforesaid, the Court does not find any merit in the writ petition and, accordingly, the same stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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