IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13542 of 2014

==

Dr. Jitendra Prasad Singh son of Sri Madhav Prasad Singh at present residing at South Road, Amir Chand Kothi, Pakri, P.S.-Pakri, District - Ara, Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar, Patna
2. The Under Secretary, Health Department, Bihar, Patna
3. The Deputy Secretary, Health Department, Bihar, Patna
4. The Incharge Officer, (Vai Da. Ni. Cell), Finance Department, Bihar, Patna
5. The Accountant General, Bihar, Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Amit Kumar Anand, Advocate
: Mr. Rabindra Kumar Ravi, Advocate

For the State : Mr. S.S.P.Yadav, S.C.-14

For the Accountant General : Mr. Uday Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-04-2017

This writ application has been filed by the petitioner for directing the respondents to revise his pension and gratuity with all consequential benefits including payment of arrear of revised retirement benefits.

2. It is submitted by the learned counsel for the petitioner that while the petitioner was posted as Medical Officer, Additional Primary Health Center, Chakki, Buxar, on 06.08.2002, he applied under the scheme of the Government for his voluntary retirement which was forwarded by the Civil Surgeon-cum-Chief Medical Officer, Buxar vide letter no.843 dated 13.08.2002. Since no information was given to the petitioner by the respondents, he sent a reminder on 15.11.2002. Thereafter, in response to the correspondence made by the respondents, he submitted relevant papers to the department on 03.09.2003. However, in spite of repeated requests, the respondents sat over the matter and the matter of voluntary retirement remained pending before the department. Seeing no way out, the petitioner filed a writ application before this Court vide C.W.J.C. No.6538 of 2003 for a direction to the respondents to allow him to retire voluntarily. In the mean time, vide resolution dated 12.11.2003, a proceeding was initiated against him for certain acts of omission and commission. After conducting enquiry, the enquiry officer submitted his report on 19.01.2004, whereafter the disciplinary authority awarded him punishments of (a) censure, and, (b) withholdment of two annual increments with cumulative effect vide order dated 11.07.2005.

3. It is submitted that the issue of voluntary retirement of the petitioner remained pending even after completion of disciplinary proceeding for almost three years from the date of issuance of punishment order. Ultimately, on 06.06.2008 the application of the petitioner for voluntary retirement was allowed whereafter his pension was sanctioned and after receiving the order of authority from the office of the Accountant General, Bihar, Patna, his pensionary benefits were paid to him.

4. The grievance of the petitioner is that even though he retired with effect from 06.06.2008, his pension and gratuity has been paid in the light of 5th Pay Commission recommendations. The contention is that the denial of benefits of 6th Pay Commission recommendations to the petitioner which came into force with effect from 01.01.2006, is wholly illegal, arbitrary and unsustainable.

5. On the other hand, learned counsel for the State submitted that immediately after retirement the pension and gratuity of the petitioner were sanctioned and paid to him. He submitted that since the petitioner has approached this Court for grant of pension and gratuity in the revised scale almost six years after receiving pensionary benefits, the writ application is fit to be dismissed solely on the principle of delay and laches. He submitted that even otherwise the petitioner is not entitled to receive pensionary benefits in the revised scale, as he remained absent unauthorizedly between 06.04.2004 and 05.06.2008.

6. Per contra, learned counsel for the State submitted that the benefits of 6th Pay Commission recommendations cannot be granted to the petitioner in the light of Resolution No.630 dated 21.01.2010 of the Finance Department, Government of Bihar, which clearly stipulates that the employees, who were under suspension or on leave or were not on duty on 1st January, 2006 will not be entitled to the revised pay structure. He submitted that since the petitioner never attended his duty on or after from 06.04.2004 till the date of retirement, he is not entitled to receive pensionary benefits in terms of 6th Pay Commission recommendations.

7. In reply, learned counsel for the petitioner submitted that vide order dated 21st July, 2011 as contained in Annexure 5 to the writ application, the period of absence of the petitioner has been regularized by the State Government under Rules 227, 230 and 232 of the Bihar Service Code (for short 'the Code') and hence the contention that the petitioner remained absent from duty unauthorizedly is erroneous.

8. I have heard learned counsel for the parties and carefully perused the record.

9. From the pleadings of the parties following facts stand admitted:-

(i) While being posted as a Medical Officer, Additional Primary Health Center, Chakki, Buxar on 06.08.2002, the petitioner applied for his voluntary retirement;

(ii) His application for voluntary retirement was forwarded by the Civil Surgeon-cum-Chief Medical Officer, Buxar to the State Government on 13.08.2002;

(iii) He absented from duty between 08.08.2002 and 06.06.2008;

(iv) On a request made by the Health Department on 04.08.2003, he sent the relevant papers to the department on 03.09.2003;

(v) While his application for voluntary retirement was kept pending, a departmental proceeding was initiated against him on 12.11.2003, in which, the enquiry officer submitted his report on 19.01.2004;

(vi) On 11.07.2005, punishment of censure and withholdment of two increments with cumulative effect was awarded against him by the disciplinary authority;

(vii) He was allowed to retire voluntarily with effect from 06.06.2008; and,

(viii) His pensionary benefits were calculated on the basis of recommendations made by the Vth Pay Commission.

10. On perusal of Annexure 5 to the writ petition, I find that the leave of the petitioner from 08.08.2006 to 05.06.2008 was sanctioned in the following manner:-

(i) 08.08.2002 to 16.03.2003 as earned leave;

(ii) 17.03.2003 to 05.04.2004 as half pay leave; and,

(iii) 06.04.2004 to 05.06.2008 as extraordinary leave.

11. Here, it would be relevant to note that under Rule 230 of the Code a Government servant may at any time be granted the whole or any part of earned leave due to him whereas in terms of Rule 232 of the Code half pay leave may be availed of on private affairs or on medical certificate and in terms of Rule 236 of the Code extraordinary leave may be granted to an employee when no other leave is admissible under the Code, or when other leave, being admissible, the employee concerned applies in writing for grant of extraordinary leave.

12. It is well settled that the extraordinary leave shall always be without salary.

13. It would be pertinent to note here that the recommendation of the 6^{th} Central Pay Commission was brought into effect by the State Government notionally from 1^{st} January, 2006 and the actual payment in the revised pay structure was given to the Government employees with effect from 1^{st} April, 2007.

14. At this stage, it would also be apposite to refer to clause (3) of the resolution of the State Government dated 21^{st} January, 2010 which reads as under:-

> "3. The revised pay structure shall come into effect notionally from 1st January, 2006. However, the actual payments in the revised pay structure would arise with effect from 1st April, 2007. The revised pay structure will apply to all State Government employees who were in service on 1st January, 2006 and to all new appointments made on or after the said date. Provided that in respect of the Government employees who were under suspension or on leave or were not on duty on 1st January, 2006, the revised pay structure will be applicable from the date of return to duty and no arrears would be admissible for the period of absence." (emphasis mine)

15. From a bare reading of the aforestated clause (3) of the resolution of the State Government, it would be evident that for applicability of revised pay structure on the recommendation made by sixth Pay commission an employee had to fulfil certain conditions. One of the conditions is that an employee who is on leave or not on duty on 1st January, 2006 would be entitled to receive revised pay structure from the date of return on duty. Further, no arrear would be admissible to such employee for period of absence.

16. The aforesaid resolution of the State has not been challenged by the petitioner. Hence, in view of the express provisions prescribed in Clause (3) of the resolution dated 21st January, 2010, the claim of the petitioner of revised pension and gratuity with all consequential benefits including payment of arrears of revised retirement benefits cannot be sustained as the petitioner never ever attended his duty on or after 1st January, 2006 till the date of his retirement on 06.06.2008.

17. On the same ground the contention of the petitioner that the period of his absence from duty was later on regularized by the State is concerned, the same would be of no consequence.

18. In the present case, from the conduct of the petitioner, it is evident that after submitting his application for voluntary retirement on 06.08.2002, the petitioner deemed himself to have voluntary retired in terms of Rule 74(b)(i) of the Code and never returned back to join his duties and after receiving the notification dated 06.06.2008 whereby the Government communicated its decision to allow him to retire voluntarily, he started making efforts to somehow claim the revised pension. In order to achieve monetary benefits, he got his long absence from 08.08.2002 to 05.06.2008, the date of his retirement regularized by way of sanction of leave under different heads.

19. However, the same would not enure to the benefit of the petitioner as he never returned to attend his duties. I am also of the view that apart from merits, the application also deserves to be dismissed on the principle of delay and laches as without offering any explanation the petitioner has filed the writ application after more than six years of his retirement and receipt of retiral dues in the pre-revised scale.

20. In that view of the matter, the writ application is dismissed both on merits and on the principles of delay and laches. No costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.04.2017
Transmission Date	