

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9917 of 2017

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Smt. Neelam Kumari, Wife of Narendra Kumar Sinha, Resident of Mohalla -
Panchwati Colony, Police Station - Phulwarisharif, Post Office- Anishabad,
District Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
 2. The Director, Administration-cum- Additional Secretary, Government of Bihar,
Patna
 3. The District Education Officer, Bihar, Patna
 4. The Accountant General, Bihar, Patna
 5. The Principal, Government Girls High School, Gardanibagh, Patna
- Respondents

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Appearance :

For the Petitioner : Mr. Lala Sheshendra Narayan Rais, Adv.
For the State : Mr. Madhaw Pd. Yadav, GP XXIII with
M/s Sanjay Kumar & Rajesh Kumar Sinha,
ACs. To GP XXIII
For the AG : Mr. Raj Jandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 09-01-2018

Heard learned counsel for the petitioner, State and the
Accountant General.

2. The petitioner has moved the Court for the following
reliefs :

*“That the present writ application is being filed for issuance
of appropriate writ/writs, order/orders, commanding the
respondents authorities to sanction and pay the post retiral
benefits including pension, gratuity and leave encashment
to the petitioner without any delay. It is further prayed that
the respondents be directed to pay the statutory as well as
penal interest on the delayed payment. And for other*



necessary relief/reliefs on the basis of the facts and circumstances of the case enumerated and state hereinafter.”

3. Today the position is that the petitioner has got 90% of pension but no gratuity and encashment of earned leave has also been denied on the ground of pendency of departmental proceeding.

4. Learned counsel for the petitioner submitted that the Bihar Pension Rules, 1950 (hereinafter referred to as the ‘Rules’), except for provisions under Rule 43(a), (b) and (c) of the Rules there is no other provision to withhold any pensionary benefit to the petitioner. It was further submitted that the aforesaid Rules do not provide for withholding of full gratuity or encashment of earned leave. Learned counsel submitted that on the ground that petitioner remained in service for a long period, more than thirty years, it will be inequitable to penalize her, after her superannuation. Learned counsel contended that the allegation is only that the service of the petitioner was irregular but not illegal.

5. Learned counsel for the State submitted that the petitioner is facing departmental enquiry which was initiated when she was in service and the charge is that her appointment is irregular. He further submitted that as per the provisions of the Rules and the Circulars of the State Government, contained in Memo No. 4546 dated 06.07.1993, the sanctioning authority has the discretion to withhold encashment of earned leave where departmental, criminal or judicial proceedings are pending. It was submitted that in the present case there being a departmental proceeding pending against the petitioner and upon superannuation the same was converted under Rule 43(b) of the Rules, the petitioner’s earned leave cannot be encashed.

6. Having considered the matter, in the opinion of the Court, the matter has to be viewed in an entirely different perspective. The question of pensionary/post retiral benefits is a consequence of a



person having put in service under the State Government and is under a policy which is governed by a statute, which is the Rules. Once, pensionary benefits are granted for service rendered under the State, the obvious presumption is that the service is in accordance with law. In the present case when the very basis and nature of service is alleged to be irregular the charge in essence will relate to validity of the service of the petitioner. Once the appointment itself is under question, all consequences flowing out of such employment will also be dependent on the ultimate verdict with regard to the status and validity of such appointment.

7. As learned counsel for the petitioner has submitted that the service has to be treated as merely irregular, though not required to be looked into by the Court as the issue is not involved in the present writ petition, still the learned counsel having raised the issue, the Court would only observe that from the description of the allegation, it has been stated that there was no proper procedure undertaken for such appointment, there was no select committee proceeding, there was no selection through interview or test and the post was never advertised in any newspaper and no roster clearance of the post to be advertised was obtained and reservation rules were also not followed. This issue has been settled by the decision of a Full Bench of this Court in the case of **Ram Sevak Yadav Vrs. The State of Bihar & Ors.**, reported as **2013(1) PLJR 964**, where, after considering the relevant decisions of the Hon'ble Supreme Court and various Courts on the issue, it has been held that appointment made contrary to the mandate of Article 14 of the Constitution of India without open competitive selection cannot be regularized under any circumstances.

8. Be that as it may, the Court is not giving any finding on the question of legality or validity of the appointment of the petitioner which has to be gone into by the authorities in the departmental



proceeding and is also not the subject matter in the present writ application. The grant of pension is subject to the provisions of the Statutory Rules and Rule 61 of the same clearly stipulates that for pension service does not qualify unless the Government servant holds substantively a post in a permanent establishment. If it is held that the service itself was not valid, no benefit under the Rules, pensionary and post retiral, can be claimed by the petitioner as it is only for a person whose service is regular and valid. Thus, the entire issue would depend on the final outcome of the departmental proceeding against the petitioner for the reason that the allegation is with regard to the very validity of the appointment; unless the service is held to be valid, there cannot be any entitlement of retiral benefits under the Rules. Only upon such controversy being settled, consequences will follow and it shall be open to the aggrieved party to move before the appropriate authority/forum/Court in accordance with law.

9. Thus, in view of the discussions made hereinabove, the Court does not feel that for the present, considering the facts and circumstances of the case, there can be any order by the Court for grant of any pension/post retiral benefit.

10. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

SA/-

AFR/NAFR	AFR
CAV DATE	N/A
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