

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4758 of 2010

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1. Dr.Md.Quasim Ahmad S/O Late Md. Sharif R/O Dadi Jee Street/Lane Near Ibp
Petrol Pump, Boring Road , P.S. S.K.Puri, Distt-Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Health Department Bihar,
Patna
2. The Joint Secretary To The Govt. Health Department Bihar,Patna
3. The Deputy Secretry To The Govt., Department Of Health Bihar, Patna
4. The Under Secretary, Health Department Govt.Of Bihar, Patna
5. The Deputy Director , Health Services Bihar, Patna
6. The Deputy Superinendent, Subdivisional Hospital Danapur, Patna
7. The Under Secretary, Finance Department Govt.Of Bihar, Patna
8. The Accountant General Bihar , Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rishit Deo Kumar Singh
Mr. Alok Kumar Mishra

For the State : Mr. Niraj Kumar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-03-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present case, the petitioner is challenging the
impugned notification dated 5.10.2009 issued by the Joint
Secretary vide memo no.971(9) dated 6.10.2009 by which
petitioner's full pension has been forfeited.

The petitioner was working in the health services and he
had applied for educational leave for higher study on 18.8.1992
which was allowed for six months. He was relived from the post
for higher study for six months but he over-stayed there and had



taken a plea that for extending the period from time to time he had sent the communication. But the respondent had never responded to his leave application, after return he gave his joining vide letter dated 26.4.1997 (Annexure-4) wherein it has been mentioned that he was giving his joining and requested for his placement but did not receive any instruction. Again he filed an application on 27.3.2003 reiterated the same and requested to give place of posting, instead of giving posting to the petitioner, the respondent decided to initiate a departmental proceeding against him. Accordingly the proceeding was initiated. The ex-parte enquiry was started, in the meantime, the petitioner superannuated from the service and proceeding was converted into the proceeding under section 43(b) of Bihar Pension Rules and thereby the order of punishment dated 5.10.2009 has been passed whereby the entire pension has been forfeited.

Learned counsel for the petitioner submits that he was not given proper notice to participate in the proceeding as well as the punishment which has been inflicted is against him is completely disproportionate to the alleged misconduct as entire pension has been taken away and thereby he would be deprived his livelihood, and he will remain empty hand for his no fault. He has further submitted that after return from England he had given his joining but neither the joining was accepted nor rejected nor he



was placed anywhere and without giving response ex-parte enquiry was conducted and punishment has been inflicted.

Learned counsel the State has submitted that the petitioner was granted leave for six months, he over stayed made a claim that from time to time application was sent for extension of time but State refuted such claim, stated that no such application was received by the State. Further submitted that he was knowing that the proceeding was started against him which is apparently clear from letter dated 8.5.2004 (Annexure-7) as statements made therein reflects he had knowledge for the proceeding. He has further stated that memorandum dated 21.4.2004 shows the same along with charge memo was sent to residential address at Boring Road, this letter shows to initiate a proceeding but the date fixed for enquiry by the Enquiry Officer was sent to Hospital address where he was not working. It was expected from the Enquiry Officer to send the notice at proper place. Conducting the ex-party enquiry without proper notice by the Enquiry Officer suffers from illegality inasmuch on return petitioner filed his application for his joining which was neither accepted nor rejected. He again gave joining in the year 2003, this time also no proper response was given. The order of punishment has been passed whereby 100% pension was forfeited which is outrageous defiance of logic as it is very much higher side as an employee



after retirement remain dependent upon the pension.

In no circumstances, 100% pension can be taken away, that too on the ground of over stay when he came and had filed application for joining. The enquiry has not done in a proper manner as notice was sent to the unknown place to petitioner.

In such view of the matter, the enquiry proceeding as well as the order of punishment dated 5.10.2009 are set aside and this Court directs, if so advised, the respondent State may hold a fresh enquiry after giving proper notice and will pass the order in accordance with law. The punishment should not be such to take away 100% pension, thereby take away livelihood of the petitioner.

Accordingly this writ petition is allowed to the aforesaid extent.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.3.2018
Transmission Date	NA

