

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1210 of 2019**

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Jagdish Prasad Singh, Son of Late Lal Bihari Singh Resident of Village and  
P.O.- Basuhar, Via- Punpun, P.S.- Punpun, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. The Director, Health Services (Filaria Control), Government of Bihar, Patna
4. The Deputy Director, Health Services (Filaria Control), Government of Bihar, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner : Mr. Shekhar Singh, Advocate.

For the Respondents : Mr. Sudish Kumar, AC to PAAG-2)

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 21-01-2019**

Heard learned counsel for the parties.

2. The petitioner has preferred the present writ petition for a direction to the respondent authorities to release the arrears of the salary of the petitioner for the period of his suspension from 15.05.2012 to 12.09.2013 along with all statutory or penal interest, whichever is applicable and for a further direction to grant him the benefits of first and second ACP with effect from 29.03.2004 to 28.03.2012 respectively and make necessary corrections in the post retiral payments of the petitioner.

3. The petitioner entered the service in the Department of Health (Filaria Control) in the year 1980 and on 21.05.1990 he was granted first time bound promotion. Two years later, he was granted promotion on the post of



Clerk-cum-Store Keeper. In the meantime, his attempts at passing the departmental examination proved unsuccessful.

4. In the year 2012, the petitioner was put under suspension on the allegation of committing some irregularities in course of his official duty.

5. It appears from the records that the suspension order was later revoked with a stipulation that appropriate decision with respect to the charges shall be taken after the report of the enquiry officer. It so happened that the enquiry officer did not find any charge against the petitioner to have been proved, which report was accepted and the petitioner again joined his duties till the date of his superannuation on 31.03.2014 from the post of Clerk-cum-Store Keeper.

6. For the period that the petitioner remained under suspension, he has not been paid his salary for which he has represented before the concerned authority but to no avail till date. It may also be noted here that quite late in the day, the petitioner was paid his post retiral dues and therefore no grievance is now being made with respect to those payments.

7. The petitioner has made an additional prayer as noted above for being granted the benefits of two ACPs reckonable from two different dates which have been referred to in the earlier part of the order. The aforesaid prayer of the petitioner cannot be acceded to for the simple reason that in the cadre of the petitioner, there was an avenue of promotion for the petitioner to be qualified for the



same for him to be paid the benefit of ACP under the rule framed in that regard. The petitioner therefore was required to pass the departmental examination which he could not.

8. Learned counsel for the petitioner has submitted that his successive attempts at passing the examination proved to be a failure, entitling him to seek an exemption. However, such prayer for exemption from the requirement of clearing the departmental examination for his promotion or grant of ACP has been made after his retirement and on that score alone such prayer has been rejected.

9. No doubt there is a circular of the Government specifying that if an employee fails successively and attains the age of 50 years he may seek exemption, but subject to certain conditions and such exemption has to be given by the departmental Minister after taking into account that the applicant/employee has not been subjected to any punishment and that such exemption would not have a deleterious/cascading effect on the service condition. Neither of the conditions are satisfied in the case of the petitioner. That apart, exemption could have been sought only during the subsistence of the service of the petitioner.

10. In that event the second prayer of the petitioner of payment of the benefits of two ACPs with effect from 29.03.2004 to 28.03.2012 is rejected.

11. However, the petitioner is entitled for being paid the arrears of salary during the period of his suspension



which was revoked and the petitioner was exonerated of all the charges in the departmental proceeding.

12. Let a fresh representation be filed by the petitioner before the Principal Secretary, Department of Health, Government of Bihar, Patna (respondent no. 3) within a period of three weeks from today seeking an order for the release of the arrears of the salary of the petitioner for the period of his suspension from 15.05.2012 to 12.09.2013. The respondent no. 3 shall on receipt of such application pass an order in accordance with law within a period of six weeks thereafter.

13. With the aforesaid direction/observation, the writ petition is disposed off.

**(Ashutosh Kumar, J)**

krishna/-

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