IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19787 of 2014

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Dr. Mohd. Khalil Ansari S/o Late Abdul Latif Ansari Resident of Village Dhangarha, P.S. Baniyapur, District Saran, Presently residing at A-41, Gandhi Bihar, Anisabadh, P.S. Gardanibagh, District Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Health, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. Joint Secretary, Department of Health, Govt. of Bihar, Patna.
4. Under Secretary, Department of Health, Govt. of Bihar, Patna.
5. Director Unani, Desi Chiktsa Nedasalaya, Department of Health, Govt. of Bihar, Patna.
6. Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Lalan Kumar
For the Respondent/s	:	Mr.Prabhat Ranjan

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 06-11-2019

1. The present writ petition has been filed for directing the respondent- State authorities to grant full pension and gratuity to the petitioner herein, inasmuch as the office of the Accountant General, Bihar, Patna has fixed the pension/ gratuity by deducting 1/3rd amount of pension and gratuity.

2. Shorn of the details, it would suffice to state that the petitioner was proceeded by way of a departmental proceeding which culminated into passing of a notification dated 02.08.2010, whereby and whereunder the petitioner was

inflicted with the punishment of compulsory retirement and it was postulated that for the period of suspension, the petitioner would not be entitled to payment of any amount of salary other than the subsistence allowance, however no bar was imposed with regard to payment of pension/ gratuity amount. Infact, the State Government vide memo dated 26.05.2011 had also recommended for payment of full pension and gratuity to the petitioner herein, nonetheless, the same has been restricted by taking shelter of Rule 46A of the Bihar Pension Rule, 1950 and the office of the A.G. has sanctioned pension and gratuity, only to the extent of 2/3rd amount.

3. The learned counsel for the petitioner relies upon ***Rule 46A of the Bihar Pension Rule, 1950***, which is reproduced hereinbelow :-

> "***Rule 46 A-*** *A Government servant compulsorily retired from service as a penalty may be granted by the authority, competent to impose such penalty pension at rate not less than two-thirds and nor more than full invalid pension and special additional pension, if any, admissible to him on the date of compulsory retirement.*
>
> *Provided that in the case of a Government servant mentioned in rule, who has completed, before such compulsory retirement, 25 years of qualifying service or more the pension shall be not less than two thirds of the invalid pension and not more than the*

> *full retiring pension and special additional pension, if any, to which he would have been entitled, if he retired on that date.*"

It is accordingly submitted by the leaned counsel for the petitioner that the competent authority while imposing the punishment of compulsory retirement, was required to restrict the pension and direct for payment of only the restricted pension and gratuity amount, in case it deemed it fit and proper to do so, however in the present case, while passing the punishment order dated 02.08.2010, the competent authority has not thought it proper to direct for restriction/ deduction of pension/ gratuity, hence the office of the Accountant General was required to issue PPO/GPO with regard to payment of the full amount of pension and gratuity and the same could not have been restricted to 2/3rd amount.

4. The learned counsel for the petitioner has relied upon a judgment rendered by a coordinate Bench of this Court ***dated 14.08.2012*** passed in ***CWJC no. 1311 of 2010 (Dr.(Mrs.) Usha Kiran v. The State of Bihar and others)***, relevant paragraphs whereof, are reproduced hereinbelow :-

> *" I have heard learned counsel for the petitioner and the State and have perused the records of the case.*
>
> *Learned counsel for the petitioner has pointed out that once the*

departmental proceeding has ended by recording a final order as contained in Annexure 3 imposing punishment of compulsory retirement as well as adjustment of unauthorised absence, there was no occasion for the Sate Authority to write such letters to the Accountant General. Learned counsel further submits that no proceeding has ever been initiated against the petitioner for such purpose and no order has been passed by the authority to that effect declaring curtailment of pensionary benefits in such manner. Thus, it is contended that, in the absence of those, sanction of 2/3 rd pension and gratuity as contained in the Annexures 4 and 8 are fit to be quashed.

Learned counsel for the State has miserably failed to show from the averments made either in the counter affidavit or in the supplementary counter affidavit that any decision to that effect had ever been taken by the authority concerned directing the curtailment of 1/3rd pension as well as gratuity amount. Despite such direction given in strong words on 2.12.2010 again an evasive supplementary counter affidavit has been filed without answering the issue. This action of the respondent authorities is highly deprecated. Learned counsel for the State has made an effort to impress upon this Court that the issue stand answered in paragraph 5 of the supplementary counter affidavit but in the opinion of this Court that state ment is with respect to the compulsory retirement of the petitioner, i.e., the issue which the petitioner is not pursuing as would be clear from the earlier orders of this Court.

In above view of the matter, this

Court is constrained to hold that the sanction of only 2/3rd of pension and gratuity amount as per Annexures 4 and 8 by the State authorities cannot old good and, thus, both the letters (Annexures 4 and 8) are quashed.

The respondent-authorities are directed to calculate the full pension and gratuity of the petitioner which would be admissible after taking into account the earlier order as contained in Annexure 3 and send the sanction letter to the office of the Accountant General within two months from the date of receipt / production of a certified copy of this order. In view of the repeated omission on the part of the respondent authorities by not answering the specific query raised by this Court in its order dated 25.6.2010 and 2.12.2010 it appears that the letters have been issued without any authority in law and the pension amount of the petitioner has been withheld illegally under the garb of such letters. In above view of the matter the respondent authorities, apart from the statutory amount which would be payable to the petitioner, would also be liable to pay an interest @ 9 % per annum on the unpaid amount to the petitioner to be calculated from the date when it became due till its payment.

Accordingly, this writ application stands allowed."

5. The applicability of the aforesaid law, settled by a coordinate Bench of this Court in a judgment rendered in the case of ***Dr.(Mrs.) Usha Kiran (supra),*** to the facts and circumstances of the present case, has not been disputed by the

learned counsel appearing for the respondents.

Having regard to the facts and circumstances of the case as also the admitted position that the present case is squarely covered by the aforesaid judgment rendered in the case of ***Dr.(Mrs.)Usha Kiran (supra),*** I deem it fit and appropriate to allow the present writ petition and direct the respondent- State to calculate the full pension and gratuity amount to be paid to the petitioner herein and accordingly, make payment of the balance amount after deduction of the amount already paid, within a period of eight weeks from today.

6. The present writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2019
Transmission Date	NA