

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6176 of 2020

Dr. Arun Kumar Mishra son of late J.N. Mishra, resident of Road No. 6,
Opposite Maila Tanki, Rajendra Nagar, P.S. Kadamkuan, town and district-
Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
2. The Additional Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
4. The Deputy Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
5. The Director-in-Chief, Health Services, Department of Health, Government of Bihar, New Secretariat, Patna.
6. The Accountant General (A and E), Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Saroj Kumar
For the Respondent/s : Ms. Shama Sinha, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 29-09-2020 Heard learned counsel for the parties.

2. The petitioner retired from service with effect from 31.07.2002 after attaining the age of superannuation, while working as Civil Surgeon-cum-Chief Medical Officer, Patna. It is his case that on the date of his retirement, though no departmental proceeding nor criminal case was pending against him, only 90% provisional pension was sanctioned and paid to him. On 19.06.2004, a departmental proceeding was initiated



against him under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules'). The charges framed against the petitioner were not proved in the report of the Inquiry Officer submitted on 15.09.2004. The petitioner was finally exonerated from the charge by the competent authority with passing of final order dated 31.10.2008.

3. In the meanwhile, large number of officers junior to the petitioner were considered for promotion to need based posts in the pay scales of Rs. 12000-16,500 with effect from 01.07.1998 and Rs. 14,300-18,300 with effect from 01.07.2001, which feel apparently prior to the date of his superannuation. The petitioner's case was not considered for the said pay scale because of the pendency of the departmental proceeding. However, a post was kept reserved for him. After the petitioner was exonerated from the charge, remaining 10% of pension and entire gratuity was sanctioned and paid.

4. It is noteworthy that the petitioner had earlier approached this Court by filing a writ application, giving rise to CWJC No. 12801 of 2003 for grant of his post retiral benefits. Since during the pendency of the writ application, the juniors were granted higher pay scale and since the petitioner was exonerated from the charge, he had filed a supplementary



affidavit in the said CWJC No. 12801 of 2003 claiming re-fixation of his retirement benefits including pension, consequent upon grant of pay scale of Rs. 12000-16,500 with effect from 01.07.1998 and Rs. 14,300-18,300 with effect from 01.07.2001. The writ application was disposed of by an order dated 09.01.2009, granting the petitioner a liberty to approach competent authority, claiming benefit of the pay scale in the light of promotion granted to his junior.

5. In the light of the liberty so granted, the petitioner filed a representation before the respondents. With a grievance that till date the respondents have not re-fixed his retirement benefits and have not paid arrears of pay, the petitioner has filed the present writ application seeking following reliefs:-

“i. For a direction on the respondents to re-fix retirement benefit of the petitioner, namely pension, gratuity and leave encashment consequent upon allowing promotional benefit in the then scale of Rs. 12000-16,500 w.e.f. 01.07.1998 and subsequent scale of Rs. 14,300-18,300 w.e.f. 01.07.2001 with all consequential benefits.

ii. For a direction on the respondents to pay difference of pension, gratuity and leave encashment amount on



account of re-fixation of retirement benefit.

Iii. For a direction on the respondents for payment of difference of salary consequent upon allowing promotional benefit in the pay scale of Rs. 12000-16,500 w.e.f 01.07.1998 and subsequent scale of Rs. 14,300-18,300 w.e.f. 01.07.2001.

iv. For a direction on the respondents to allow interest on delayed payment of arrears of salary, pension, gratuity and leave encashment in terms of their own decision.”

6.It is not required for this Court to go into all averments made in the writ application, in the light of the statement made in a counter affidavit, which has been filed on behalf of the State of Bihar in this case. It has been stated in the counter affidavit that the petitioner’s claim for grant of promotional benefits in the scale of Rs. 12000-16,500 and subsequent pay scale of Rs. 14,300-18,300 are in active consideration and the same shall be placed before the Departmental Promotion Committee soon. It has been stated that because of ongoing COVID-19 pandemic, the decision is likely to take sometime. However, for completing the all procedural requirements,



six months' time is needed.

7. From the counter affidavit filed on behalf of the State of Bihar on 24.07.2020, it appears that the petitioner's case for grant of promotional benefits has not been considered so far despite the fact that persons junior to him have been granted such benefits after consideration. The petitioner's case was not considered for promotion apparently because of pendency of the proceeding against him under Rule 43(b) of the Rules. This observation is being made because the respondents have not denied this aspect of the matter in the counter affidavit.

8. Considering aforesaid admitted facts and circumstances of the case, this application is disposed of with a direction that let the petitioner's case for grant of pay scale of Rs. 12000-16,500 with effect from 01.07.1998 and subsequent pay scale of Rs. 14,300-18,300 with effect from 01.07.2001 be considered and decided forthwith. The arrears of salary arising out of promotional benefits, if the same is granted, must be paid to the petitioner without further loss of time. The petitioner's retiral benefits shall also be re-determined and arrears of such benefits must be paid immediately thereafter.

9. The Court expresses displeasure over the lackadaisical approach of the respondents in considering the



petitioner's case, so far.

10. In the facts and circumstances of the case, the Court directs the respondents to ensure that all admissible dues, which the petitioner is entitled to against arrears of salary/pension as indicated above are paid to him within a period of six months from today.

11. It goes without saying that the petitioner shall be at liberty to raise his grievance before the competent authority, if according to him, the decision of the Respondents for re-determination of his claim do not redress his grievances.

12.. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

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