

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7439 of 2020

Dr. Anisur Rahman Ansari Son of Late Reyazur Rahman Ansari Resident of Flat No. 403, A- Block, Hytec Azhar, Samanpura, Near Belal Masjid, Post Office- Bihar Veterinary College, Police Station- Shastrinagar, District- Patna- 800014.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Under Secretary, Department of Health, Government of Bihar, Patna.
3. The District Magistrate Saran at Chapra.
4. The Civil Surgeon cum Chief Medical Officer Saran at Chapra.
5. The Additional Chief Medical Officer Saran at Chapra.
6. The Additional Director cum Conducting Officer Department of Health, Government of Bihar, Patna.
7. The Accountant General Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Adv. Mr. Syed Masleh Uddin Ashraf, Adv.
For the Respondent/s	:	Mr. Ajay Behari Sinha, G.A.-8 Mr. Neeraj Raj, AC to G.A.-8

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-03-2021

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

This writ application has been filed by the
petitioner for issuance of an appropriate writ/order/direction
commanding the respondents to pay the post retiral benefits of
the petitioner viz. Pension, Gratuity and Leave Encashment with
statutory interest as the petitioner has superannuated on
30.04.2019.



The facts giving rise to the present writ petition is that the petitioner joined the Health Service of the State on 15.07.1981 on the post of First Medical Officer, Primary Health Centre, Minapur, District-Muzaffarpur. Thereafter, he was posted at various places, either as Medical Officer or In-Charge Medical Officer or on Leave Reserved Post. Finally, on 06.10.2009, he was posted as Medical Officer in Primary Health Centre, Mashrak, District-Saran and retired from there on 30.04.2019 as Medical Officer In-charge.

After superannuating from the post of Incharge Medical Officer, the petitioner submitted his pension paper to the office of A.G. Bihar for issuance of P.P.O. and Gratuity with no objection certificate but he has not been paid his pension and gratuity up till now.

It is stated that while the petitioner was posted as Medical Officer, Primary Health Centre, Mashrak, Saran, on the basis of Memo No. 684 dated 15.02.2019 issued by Civil Surgeon-cum-Chief Medical Officer, Saran at Chapra, he was subjected to departmental proceedings for which memo of charge has been issued on 30.08.2019. Petitioner submitted his show cause to the Conducting officer on 27.09.2019 stating therein that he has not committed any misconduct so far as the



alleged purchased is concerned. The Civil Surgeon-cum-Chief Medical Officer, Saran has passed an order on 31.05.2019 withholding 10% honorarium of Block Health Manager, Mashrak and Anchal Accountant, Mashrak for the month of May, 2019 only. The petitioner has also submitted his supplementary show cause on 22.10.2019 to the Conducting Officer.

Learned counsel for the petitioner submits that petitioner superannuated on 30.04.2019 and charge memo has not been served to the petitioner before superannuation but the said charge memo has been served to the petitioner on 30.08.2019 and the proceeding has been started under Rule 43(b) of the Bihar Pension Rules. Learned counsel for the petitioner further submits that petitioner has already been paid General Provident Fund and Insurance Amount.

A counter affidavit has been filed by the respondent nos. 1, 2 and 6 in which it is stated that departmental Memo No. 861 (2) dated 24.08.2020 has been issued for making payment of 90% pension of the petitioner and 10% pension has been kept in-abeyance due to pendency of departmental proceeding already initiated against him vide memo no. 970 (a) dated 02.09.2019 (Annexure-A and A/1 of the counter affidavit).



So far as the payment of gratuity amount is concerned, gratuity amount of the petitioner has been withheld due to pendency of departmental proceeding in the light of the notification no. 77 dated 21.01.2019 issued by the Finance Department, Government of Bihar. The petitioner superannuated from service on 30.04.2019 but prior to that the Civil Surgeon, Saran vide his letter No. 684 dated 15.02.2019 had already made available memo of charge against the petitioner alleging misappropriation of fund of Rs. 34,75,000/- committed by him in purchase in the financial year 2016-17 under the CHC head.

Learned counsel for the State submits that in memo no. 52 (2) dated 13.01.2021, the petitioner's admissible unutilized earned leave equivalent to 300 days has been sanctioned for making payment (Annexure-D of the supplementary counter affidavit).

It is admitted fact that petitioner was retired on 30.04.2019 and on that date no departmental proceeding was pending against him. After retirement of the petitioner, charge memo was served to him on 30.08.2019, thereafter, departmental proceeding started against the petitioner under Section 43 (b) of the Bihar Pension Rules.

I have heard the learned counsel for the



petitioner and learned counsel for the State at length and perused the case record. At this juncture, it would be relevant to reproduce hereinbelow notification no. 77 dated 21.01.2019:-

“Rule-27 of the Bihar Pension Rules, 1950 shall be substituted by the Following:-

“27-Pension includes gratuity except the cases under rule 43(d).”

The following a new clause (d) shall be added after clause (c) of rule-43 of Bihar Pension Rules, 1950:-

“(d)-if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding and issuance of order accordingly.”

Rule 43(d) says that if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental or judicial proceeding.



In the present case, the petitioner retired on 30.04.2019 and on that date no charge of memo was given to the petitioner. It is admitted fact that no departmental proceeding was pending against the petitioner before superannuation but the departmental proceeding was initiated against the petitioner on 02.09.2019 (Annexure-A/1 of the counter affidavit).

It is also fairly well settled that departmental proceeding can be said to have initiated only when charge-sheet has been served. Admittedly, the charge-sheet in the instant case was served only on 30.08.2019 after superannuation of the petitioner.

State counsel relying upon the charge-sheet dated 15.02.2019 (Annexure-2 of the writ application), but the so called charge-sheet is a mere recommendation by the Civil Surgeon-cum-Chief Medical Officer, Saran before Principal Secretary, Health and is yet to be endorsed by the State Government, by issuance of a notification. The charge-sheet thus may be a recommendation but does not possess the essentials of an order of the State Government. Such notification was issued on 30.08.2019 (Annexure-E of the counter affidavit).

In the facts and circumstances of the case and the discussions made in the foregoing paragraph, Rule 43 (d) of the



Bihar Pension Rules, 1950 is not applicable in the present case.

Considering the legal proposition, the respondents are directed to pay entire gratuity amount to the petitioner within a period of four months from the date of receipt/production of this order. It is made clear that if the admitted dues of the petitioner is not paid to him within the stipulated period, as aforesaid, the concerned respondents shall be solely responsible for non-compliance of this Court's order.

With the aforesaid observation and direction, this writ application is disposed of.

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2021
Transmission Date	NA

