

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9098 of 2016

Jai Prakash Gupta Son of late Laxmi Narayan Gupta Resident of -133, Bazar,
Deoghar, at Present residing at Bara Bazar, PS Deoghar, District Deoghar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Labour Resources Department, New Secretariat, Bailey Road, Patna.
2. Additional Secretary, Labour Resources Department New Secretariat, Bailey Road, Patna.
3. Under Secretary, Labour Resources Department New Secretariat, Bailey Road, Patna.
4. Director, Employment and Training, Directorate of Employment and Training New Secretariat, Bailey Road, Patna
5. Deputy Director Employment, New Secretariat, Bailey Road, Patna
6. The Account General , Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Bose, Sr. Advocate Mr. Ajay Kumar, Advocate
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta Gp-10 Mr. Anwar Karim, Ac to Gp-10 Mr. Satya Vrat, Ac to Gp-10

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 08-12-2021

Heard learned counsels for the parties.

In the instant petition, petitioner has sought for the
following reliefs:

*“(i) That by this petition, the petitioner prays
for direction on respondents to provide the*



petitioner disability pension and other post retirement dues in accordance with law.

(ii) That the petitioner also prays for direction against the rejection order dated 31.12.2015 issued by the Dy. Secretary, Labour Resources Department, Govt. of Bihar, Patna by which the respondents have rejected pension without holding proper medical board [although till date have a bullet inside the body of the petitioner, in the left lower Uretor (Annexure-11 Series)] and without application of mind upon the reply of the petitioner dated 10.09.2015 in reply to their letter related to pension dated 25.08.2015 issued by Additional Secretary, Labour Resources Department, Patna.”

The petitioner was an employee of the Labour Resources Department. While he was at home in the year 1990, it is alleged that petitioner's family was attacked by some persons with arms. In the result, petitioner suffered injury which was a hurdle for him to discharge the duty of the post held by him. Thus, he remained unauthorized absent from 10.03.1990.

The petitioner had submitted application seeking for a disability pension. After many years, he was subjected to medical board, in which, medical board has expressed its opinion that injury suffered by the petitioner could not be a hurdle in discharging duties of the post held by him. Thereafter, the petitioner continued to remain unauthorized absent.



The State of Bihar was bifurcated into two states, namely, the State of Bihar and the State of Jharkhand on 15.11.2000. The State of Bihar had not given option to the petitioner whether he intends to opt for State of Bihar or State of Jharkhand.

Unnecessary correspondence was being entertained by the official respondents in stead of taking disciplinary action against the petitioner for remaining unauthorized absent from 10.03.1990. During the protracted correspondence, in the normal course petitioner attained the age of superannuation and retired from service on 31.08.2009.

From perusal of the records, it is evident that there is total lapses on the part of the concerned officials of the department Govt. of Bihar, who have slept over the matter in not taking any action against the petitioner for remaining unauthorized absent from 10.03.1990 till 31.08.2009 i.e. the date on which petitioner has attained the age of superannuation and retired from service. Even from the year 2009 to this day, there are lapses on the part of the concerned respondent in not initiating any disciplinary proceeding against the petitioner for remaining unauthorized absent.



Further, it is to be noted that in the supplementary counter affidavit filed by the respondent, it is stated that records are not available as to whether disciplinary action has been taken against the petitioner or not.

In the light of these facts and circumstances, the petitioner is entitled to retiral benefits. However, he is not entitled for arrears of salary from 10.03.1990 to 31.08.2009, as he has not discharged the duty of the post held by him read with the principle of no work no pay. For the intervening period i.e. from 10.03.1990 to 31.08.2009, Service of petitioner is required to be taken into consideration only for the purpose of fixation of pension. Even though, he had worked from 02.02.1977 to 09.03.1990 for about 13 years, if he is entitled for pension read with the length of service prescribed is 20 years, from 10.03.1990 to 31.08.2009 is taken into consideration, petitioner would be completing more than 20 years of service.

Having regard to the facts and circumstances of the present case, the concerned respondent is hereby directed to redress the grievance of the petitioner in extending retiral benefits and calculate pension for the period from 02.02.1977 to 31.08.2009. The same shall be calculated and disbursed. Further



pension during the period from 01.09.2009 to this day, the same shall be calculated and disbursed in favour of the petitioner.

The above exercise shall be completed within a period of three months from the date of receipt of this order.

Thus, the petition stands disposed off.

(P. B. Bajanthri, J)

Gaurav Kumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

