**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.11975 of 2019**

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Chandeshwar Rai Son of Late Bhola Rai Resident of vilalge and post- Sirsi P.S.- Nanpur District- Sitamarhi.

... ... Petitioner

Versus

1. The State of Bihar through its Chief Engineer Mehcanical P.H.E Department, New Secretariat Viswasraiya Bhawan, Bailey road, Patna.
2. Super Intending Engineer P.H.E.D Circle Rahamganj Khan Chowk District Darbhanga.
3. Accountant General, Accounts (Accounts and Hakdari) Birchand Patel Path, Patna Bihar.

... ... Respondents

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**Appearance :**

For the Petitioner/s : Mr.
For the State : Mr.Maruth Nath Ray, AC to SC-4
For the Accountant General: Mr.Chaitanya Swaroop, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL ORDER

7 13-01-2021 The petitioner in the present case is seeking direction in the nature of mandamus directing the respondent authorities to make payment of his claim towards arrears of retirement benefit as per the actual date of superannuation on 31.07.2009. He has prayed for fixation of his pension taking his date of superannuation as 31.07.2009. It is the case of the petitioner that as per the entries made in the service book, he continued in service up to 31.07.2009 and superannuated as Head Assistant in the Public Health Engineering Department, Darbhanga with effect from 31.07.2009.

As against the claim of the petitioner, the respondents found that the date of birth of the petitioner is 07.07.1946 and the entry made in the service book was interpolated by overwriting. In this connection enquiries were also made, the original matriculation certificate of the petitioner was obtained, the same was verified and the correct date of birth was found as 07.07.1946. The petitioner was, thus, informed that his date of superannuation would be 31.07.2004.

It appears that the petitioner had challenged the communication as contained in letter no. 250 dated 17.07.2009 (Annexure '1') by filing a writ application in CWJC No. 9924 of 2012. The Hon'ble Writ Court had been pleased to set aside the communication as contained in Annexure '1' and issued direction to the respondents to determine and pay the pension to the petitioner within a period of three months from the date of receipt/production of a copy of the order. Annexure '2' is the order passed by the Hon'ble Writ Court.

The subsequent events of lodging of FIR against the petitioner, submission of charge-sheet and then the fact that the petitioner was acquitted in the said case vide judgment dated 08.10.2018 in G.R. No. 1788 of 2009, T.R. No. 118 of 2018 (Annexure '4' to the writ application) are matters of record.

It is the further case of the petitioner that the respondent State filed Letters Patent Appeal bearing No. 51 of

2013 and in the said appeal the Hon'ble Court was pleased to pass order dated 23.01.2015 directing the Secretary, P.H.E.D, Government of Bihar to enquire into the matter giving opportunity to the respondent/petitioner and to enquire about the misrepresentation and also about the fixation of responsibility on the officer who permitted the respondent/petitioner to continue up to 31.07.2009 in service.

The petitioner claims that after the said order was passed an enquiry was conducted by the Joint Secretary-cum-Enquiry Officer, the petitioner has also filed a reply to the show cause on 27.11.2015 indicating the facts but then his submission is that no second show cause was served upon him before reaching to a conclusion and passing of the order. The petitioner claims that he is not responsible for overwriting in the service book, therefore, his actual date of birth must be taken as 07.07.1949 and his date of superannuation will be 31.07.2009. In this regard the petitioner is also said to have made representation to the Superintending Engineer, P.H.E.D Circle, Darbhanga.

A counter affidavit has been filed on behalf of the State respondents. The most relevant fact stated in the counter affidavit is contained in paragraph '9' which reads as under:-

"That against the order dated 16.07.2012 passed in CWJC

> No. 9924 of 2012 the State of Bihar has preferred an LPA bearing L.P.A. No. 51 of 2013. The aforesaid LPA has been disposed of vide order dated 03.03.2016 with following observations "Therefore the present Letters Patent Appeal is disposed of directing the State to calculate and pay all retiral benefits as are payable to the respondent as on 31st July, 2004. If any retiral benefits have not been paid, the same shall be calculated and paid to the respondent within next three months from today."

The State respondents have further stated that in compliance of the order dated 03.03.2016 passed in LPA No. 51 of 2013, the petitioner has been paid an amount of Rs.1,09,990/- on account of arrears of salary for the period of March 2009 to 17.07.2009. He has also been paid his salary for the period of 01.08.2004 to 17.07.2009. For this reason, the petitioner is not entitled for payment of pension for the aforesaid period since both salary and pension cannot be paid simultaneously.

It is further stated in the counter affidavit that the petitioner is being paid his pension with effect from 18.07.2009 by the Treasury, Sitamarhi and he has been paid the GPF amount as also gratuity, group insurance benefit and leave encashment.

Mr. Maruth Nath Ray, learned AC to SC-4 submits that in view of the order passed by the Hon'ble Division Bench of this Court in LPA N0. 51 of 2013, the prayer made by the petitioner in the present writ application is only misconceived and in fact while filing the writ application, the petitioner has purposely not brought to the notice of this Court the final order passed by the Hon'ble Division Bench on 03.03.2016, the relevant part of which has been quoted in paragraph '9' of the counter affidavit.

Mr. Chaitanya Swaroop, learned counsel for the Accountant General is also present.

This Court finds from the records that copy of the counter affidavit was served on learned counsel for the petitioner when the virtual court proceedings were going on. On 21.09.2020 two weeks' time was prayed for on behalf of the petitioner to file a rejoinder. This Court adjourned the matter but again on 12.10.2020 when it was called out, learned counsel for the petitioner prayed for four weeks' time to file a rejoinder to the counter affidavit. This prayer was also allowed. The rejoinder affidavit has not been filed. Today, no one has appeared on behalf of the petitioner.

In view of the materials on the records particularly the information furnished in paragraph '9' of the counter affidavit, this Court finds that the issue has been settled by the Hon'ble Division Bench of this Court in LPA No. 51 of 2013. Once the

Hon’ble Division Bench has held that all the retiral benefits are payable to the petitioner as on 31st July, 2004, nothing remains for adjudication by this Court in the facts of the present writ application.

This Court finds that in the writ application, the petitioner has not brought to the notice of this Court the final order passed in LPA No. 51 of 2013 and in the opinion of this Court this fact has been purposely not stated in the writ application. This may amount to withholding the most relevant information by not disclosing it to the Court. Since the petitioner is a retired employee, this Court is not taking a serious view of the matter, though, the Court disapproves the conduct of the petitioner. The stands of the State respondents in the counter affidavit have remained uncontroverted despite repeated indulgence granted by this Court.

This writ application has, thus, no merit and is dismissed accordingly.

**(Rajeev Ranjan Prasad, J)**

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.