

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3121 of 2020

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Kishori Mohan Prasad S/o- Late Awadhesh Prasad @ Awadhesh Prasad Singh
R/o Village and P.O.- Latta, P.S.- Pothu, District- Aurangabad. At present
Residing at Mohalla- 1A Motimani Apartment White House Compound Road
No. 6, Gaya, P.S.- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Health Secretary, Bihar, Patna.
2. The Director In Chief Health Services, Bihar, Patna.
3. The District Magistrate Gaya, District- Gaya.
4. The Superintendent Anugrah Narayan Magadh Medical College, Gaya (ANMMC).
5. The Registrar Anugrah Narayan Magadh Medical College, Gaya.
6. The Principal Anugrah Narayan Magadh Medical College, Gaya.
7. The Treasury Officer Gaya, District- Gaya.
8. The Accountant General Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Himanshu Kumar, Advocate.
For the Respondent/s : Mr. Kamlesh Kumar, AC to SC-12.
For the Accountant General: Mr. Ram Yash Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 29-11-2022

Heard Mr. Himanshu Kumar, learned counsel for the
petitioner, Mr. Ram Yash Singh, learned counsel for the



Accountant General, Bihar and Mr. Kamlesh Kumar, learned AC to SC-12 for the State.

The writ application has been filed seeking a direction upon the respondents to ensure payment of all the retiral benefits, including Pension, GPF, GIC, Gratuity and Leave Encashment as also the salary for the period during which the petitioner worked on contractual basis.

Admittedly, during the pendency of the present writ application, the petitioner has stood paid all his substantial retiral benefits including the salary for the period during which the petitioner worked on contractual basis.

However, during the pendency of this writ petition the Principal, Anugrah Narayan Magadh Medical College, (herein after referred to as “ANMMC”) Gaya issued order contained in Memo No. 2563 dated 07.12.2019 directing for recovery of the amount of Rs. 2,44,740.13/- from unutilized earned leave of the petitioner, which has been challenged by the writ petitioner vide Interlocutory Application No. 01 of 2021, and the same stands allowed on 27.06.2022 by this Court.

Shorn of unnecessary details, the facts which are relevant for consideration of the issue is that the petitioner was appointed as a Librarian in “ANMMC”, Gaya on 20.03.1982 and



after working more than 35 years, he superannuated from the service on 30.04.2017 from the post of Librarian. It is also the case of the petitioner that after his retirement, the petitioner was again appointed as a Librarian on 02.05.2017 on contractual basis in the same college, where he worked till 06.02.2018. From the materials available on record, it is evident that while the petitioner was working as a Librarian in the college, in question, he was asked to hand over the charge of books and other articles but when the same was not done, letters/reminders were written to the petitioner to hand over the charge of the library but allegedly the same has not been done and as such, vide letter no. 41 dated 08.01.2019, the principal of the “ANMMC”, Gaya made a request to the District Magistrate, Gaya to appoint a Magistrate for preparation of inventory. Pursuant to the direction of the District Magistrate, Gaya, the Labour Enforcement Officer, Town was deputed as a Magistrate for preparation of inventory and after preparation of the inventory, a report was submitted on 15.07.2019 as contained in annexure 3, wherein it is stated that in absence of the petitioner, the library was functioning properly and books were given and taken from the readers/students and all the keys of the bookshelves were kept at the library and, in fact, no shortcomings was found.



Despite submission of the report furnished by the Labour Enforcement Officer, Town the Principal “ANMMC”, Gaya has constituted a committee of three men for physical verification of the library of the college and on verification 111 books were found short as per the accession register of the college.

Having been found shortage of the books, the value has been assessed, which came to Rs. 2,44,740.13/- and the principal, “ANMMC”, Gaya vide his letter/memo no. 2563 dated 07.12.2019 directed to recover the amount of Rs. 2,44,740.13/- from the unutilized earned leave of the petitioner, which is under challenge in the present writ application.

Mr. Himanshu Kumar, learned counsel for the petitioner while assailing the impugned order of recovery vehemently submits that the principal of the college was not the competent authority, who issued the impugned order directing for recovery. He submits that, in fact, the impugned order has been issued in anticipation of the approval from Director-in-Chief, Health Services, Bihar, Patna and as such, the same has been issued without even getting the approval of the competent authority, hence, any order for recovery of any amount is wholly illegal.

It is further submitted that before the issuance of the order impugned neither any show cause notice has ever been



issued/served upon the petitioner nor the petitioner was asked either by the Committee or the Principal of the college of the petitioner to participate in the inquiry on whose recommendation recovery order has been passed. It is next submitted that the petitioner was not the in-charge of distribution and collection of the books of the Central Library and in fact, Library Assistant was the in-charge of the books for distribution and collection of the books. The work of the petitioner was only to supervise the work of other library staff, purchase of books and general sale of old newspapers, Magazines, which is also evident from the work distribution order dated 05.02.1983 issued by the Chairman Library-cum-Principal "ANMMC", Gaya, vide annexure P/7 of the I.A.

It is also submitted that any order of recovery after the retirement of the petitioner cannot be passed without initiating any proceedings under rule 43(b) of the Bihar Pension Rules apart from the fact that the impugned order of recovery is passed unilaterally and behind the back of the petitioner.

On the other hand, learned counsel for the Respondent-State confronting the submissions made on behalf of the learned counsel for the petitioner submits that time without number the letters were issued to the petitioner directing him to hand over the



charge of the library but he never appeared for handing over of charge, which resulted into deputation of a Magistrate for preparation of inventory and it is the admitted fact that shortage of 111 books was found the valuation of which has been assessed to the tune of Rs. 2,44,740.13/-. It is also submitted that since the petitioner had already superannuated on 30.04.2017, the Principal, “ANMMC”, Gaya had directed to recover the amount from unutilized earned leave of the petitioner. It is further submitted that awaiting the order of the Principal Secretary, Health Department with respect to the pension, a letter has been sent to the Accounts Officer to start the pension and other benefits of the petitioner and now all the substantive retiral benefits have stood paid to the petitioner except the aforesaid amount, in question, which was found to be recovered.

Now the question for consideration before this court is as to whether the impugned order of recovery from the unutilized earned leave of the petitioner is legal and justified after the retirement of the petitioner. Admittedly, the petitioner was worked as a Librarian of the college, in question, who superannuated on 30.04.2017 and from the order of the work distribution, it appears that the petitioner was not in-charge of distribution and collection of books of Central Library rather the work of the distribution and



collection of books were assigned to the Assistant Librarian as is also evident from the other materials available on record. It is also noticeable that before passing the order of recovery neither any departmental proceeding nor any inquiry was conducted of which the petitioner was a party. The impugned decision of recovery has been taken unilaterally without even issuing any show cause notice or opportunity to the petitioner.

It is well settled that any order or action having adverse consequences, in respect of person cannot be taken without the person being heard. The impugned order to that extent suffers from the vice of arbitrariness, apart from violative of principles of natural justice. It is the cardinal principle of the administrative law that no person shall be condemned unheard. Any order, which prejudicially affects the rights of the person must be in consonance with the principles of natural justice, otherwise it would become a nullity. It is also well settled that no recovery from the pensionary benefits can be made from a retired employee without initiating a departmental proceeding either under Rule 43(b) or under Rule 43A or 139 of the Bihar Pension Rules, 1950 wherein the employee is found to be guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence



after a due proceeding as prescribed under the Bihar Pension Rules.

In view of the aforesaid facts and the settled proposition of law, the impugned order of recovery as contained in Memo No. 2563 dated 07.12.2019 apparently suffers from vice of arbitrariness and in complete defiance of the principle of natural justice, hence, not sustainable in any view of the matter and the same is hereby set aside and the respondents authorities are directed to refund the deducted amount of the petitioner forthwith.

Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

