

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3955 of 2023

Dr. Naresh Chandra Mishra S/o Late Shiv Shankar Mishra, R/v- Mangrauni Road, Sankat Mochan Colony near at Ram Janki Mandir, Mangraukni, P.S.- Madhubani Town, Distt.- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Additional Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The Regional Deputy Director, Health Services, Darbhanga Division, Darbhanga.
5. The Civil Surgeon cum Chief Medical Officer, Samastipur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Arvind Kr. Srivastava, Advocate Mr. Vijay Kumar Sinha, Advocate Mr. S.K. Bhatnagar, Advocate
For the State	:	Mr. S.D. Yadav, AAG-9 Mr. Anil Kumar Verma, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-09-2023

Heard Mr. Arvind Kumar Srivastava, learned counsel appearing on behalf of the petitioner and Mr. Anil Kumar Verma, learned AC to AAG-9 for the State.

2. In the present writ petition, the petitioner has prayed for following relief:

“1. That this writ application is being filed for issuance of an appropriate writ/writs order/orders commanding/directing the respondents to release the retiral benefits to the petitioner who has already superannuated from the service since 31.01.2023 from the post of Medical



Officer, Primary Health Centre, Korbaddha, Samastipur presume to be accepted the joining petition of the petitioner dated 26.10.2022 (Annexure-12) after medical mental fitness.”

3. Learned counsel appearing on behalf of the petitioner submits that in absence of any departmental proceeding initiated against the petitioner, during his service period or after his retirement, Rule 43 of the Bihar Pension Rules, 1950 prohibits such action in not making payment of pension and gratuity.

4. At this stage, learned counsel appearing on behalf of the State submits that according to Sub-Rules (c) and (d) of Rule 43 of the Bihar Pension Rules, 1950, the petitioner is not entitled for gratuity if any departmental or judicial proceeding is pending against the govt. servant at the time of retirement, full amount of gratuity may be withheld.

5. This Court finds that the submission made on behalf of the State is misconceived and without authority of law. The amendment has been brought by substituting sub-rule (d) of Rule 43 of Bihar Pension Rules, 1950 in the month of January, 2019 and petitioner has retired much prior to the aforesaid date. Such penal action cannot be taken retrospective in garb of amendment brought in the year 2019.



6. Considering the aforesaid facts as well as counter affidavit filed on behalf of respondents no. 1, 2 and 3, the Additional Chief Secretary, Health Department, Government of Bihar, Patna is directed to make payment of all admissible retiral dues to the petitioner in accordance with law taking into consideration that the petitioner has retired on 31.01.2023. The petitioner, if so desires, may file a detailed representation before the concerned authority, who will decide to take steps to make payment of all retiral dues to the petitioner in accordance with law.

7. With the above observations and directions, the writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2023
Transmission Date	

