

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6451 of 2023

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Mithilesh Prasad S/o Late Shivnandan Prasad Resident of Radheshyam Apartment, Chanakya Nagar, R.B.S. Kumhrar, P.S.-Agamkuan, Town and District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Director in Chief (Administration), Health Services, Bihar, Patna.
3. The Superintendent, Infectious Disease Hospital, Agamkuan, Patna.
4. The Treasury Officer, Patna.
5. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar, Advocate
For the State	:	Mr. Pankaj Kumar, SC-12
		Mr. Anuj Kumar, AC to SC-12
For the AG	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 17-08-2023

Heard Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner; Mr. Pankaj Kumar, learned SC-12 along with Mr. Anuj Kumar, learned AC to SC-12 appearing on behalf of the State and Mr. Vivekanand Kumar, learned counsel appearing on behalf of the Accountant General.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been denied pension and retiral benefits. No. criminal or departmental proceeding was pending against him on the date of his retirement.

3. Learned counsel for the State submits that the Civil Surgeon, Patna has proceeded against the petitioner for holding the petitioner responsible for taking extra service from one Ashok Kumar Dubey who was posted as Cook in the Office of Superintendent, Infectious Disease Hospital, Agamkuan, Patna. He further submits that petitioner was posted as clerk and he being the custodian of the records, can only be held liable for taking work for extra period of two years. The petitioner having not informed the higher authorities has committed illegality therefore, his 10% pension and entire amount of gratuity has been withheld. At this stage, learned counsel further submits on the instruction received from the District Immunization Officer that departmental proceeding against the petitioner is pending before the Civil Surgeon, Patna and the charge memo is expected to be served by today to the petitioner.

4. Considering the nature of allegation as well as the fact that petitioner had retired on 30.11.2022 on which date there was no departmental proceeding pending against the petitioner nor petitioner was facing any criminal charge, the action of the Civil Surgeon, Patna is without jurisdiction and withholding of 10% pension and entire amount of gratuity is not sustainable in the eye of law. The petitioner cannot be held

liable for taking any extra service from the cook namely Ashok Kumar Dubey who was serving in the office of the Superintendent, Infectious Disease Hospital, Agamkuan, Patna, as admittedly petitioner is not his appointing authority.

5. Considering the fact that in absence of any allegation of misrepresentation or fraud, being attributable to the petitioner for taking extra work from cook namely, Ashok Kumar Dubey, who was allowed to continue to work even after retirement, without any objection whatsoever from the competent authorities, it would be unfair and mala fide on part of the authorities concerned to proceed against petitioner for the irregularities in taking extra service from the cook. The law relating to remaining in service for any period more than the age of superannuation is no longer *res integra*. The Apex Court in the case of ***State of Bihar & Ors. Vs. Pandey Jagdishwar Prasad*** reported in ***(2009) 3 SCC 117*** wherein it has been held that recovery of salary was not permissible, because there was no evidence that employee had made any misrepresentation or committed any fraud due to which he continued beyond retirement age. In the present case, petitioner has been penalized for having taking extra job, when he is not even the appointing authority to appoint cook.

6. The concerned authorities are directed to make payment of retiral dues to the petitioner forthwith in accordance with law within a period of three weeks. The Superintendent, Infectious Disease Hospital, Agamkuan, Patna, Bihar is directed to send the entire service record relating to the petitioner to the competent authority without delay.

7. The writ petition, accordingly, stands disposed of.

(Purnendu Singh, J)

Mantreshwar
Minu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.08.2023
Transmission Date	N.A.