

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10225 of 2020

Harinarayan Sharma S/o-Late Sitaram Sharma, Resident of Village - Jhunathi,
P.S.-Kinjar, District-Arwal

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Higher Education, Government of Bihar, New Secretariat, Patna, Bihar.
2. The Accountant General (A and E), Bihar, Patna.
3. The District Collector, Arwal
4. The District Education Officer, Arwal
5. The District Program Officer, Establishment, Arwal.
6. The Block Education Officer, Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate.
For the State : Mr. S. K. Ranjan, AC to GP-17.
For the AG Bihar : Mr. Ram Kinker Choubey, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-06-2023

The writ petition under consideration has been filed

for following reliefs:

“That this present writ application is being filed on behalf of the petitioner for issuance of writ in nature of mandamus for commanding the respondents to compliance the letter dated 02.12.2019 vide memo 05/PEN061119053657/201911052070P0, whereby and where under the petitioner has been deprived from payment of his monthly pension and commuted value of the pension since the date of his retirement to up till now and further be pleased to issue of any relief/reliefs for which the petitioner is entitled in the eye of law.

2. Brief facts of the case are that the petitioner was initially appointed on the post of assistant teacher on 12.09.1983 and the petitioner retired on 31.07.2019 as In-charge Headmaster, Mahavir High School, Jhunathi, Arwal and after



his retirement, the petitioner has been paid following retiral dues benefits:

- (I) Leave Encashment amounting Rs. 10,07,370/-
- (ii) Group Insurance amounting Rs. 2,55,930/-
- (iii) G.P.F. amounting Rs. 17,73,538/-
- (iv) Provisional Pension (90%)

3. The amount of Leave Encashment, Group Insurance and G.P.F. was paid to the petitioner through CFMS on 02.06.2020.

4. The allegation against the petitioner is that the petitioner was not handing over the charge of school to the competent authority and he had not produced any document showing the evidence of handing over the charge. The District Programme Officer (Establishment) Arwal vide memo No. 887 dated 17.06.2022 directed the In-charge Headmaster +2 Mahavir High School, Jhunathi, Karpi to submit report after calculating the amount of misappropriated fund by the petitioner during his service period. The In-charge Headmaster had submitted report vide letter No. 32 dated 22.06.2022 stating that the petitioner was working as In-charge Headmaster from 07.11.2023 to 27.12.2006 and 01.02.2014 to 31.07.2019 but after retirement he did not hand over the charge to the In-charge Headmaster of the school.

5. It is alleged that on the date of retirement the petitioner till date has not handed over the charge of financial



records of the school. A departmental proceeding was initiated against the petitioner. The District Programme Officer (Establishment), Arwal for the said alleged reason sanctioned 90% pension and gratuity vide memo no. 794 dated 26.06.2023 by withholding 10% of pension and gratuity subject to the result of departmental proceeding.

6. Learned counsel for the petitioner submits that due to local politics the petitioner has been dragged in litigation and which has led to initiation of departmental proceeding against him for no fault on his part. He further submits that the allegation against the the petitioner is false that he had not handed over the charge of non-financial and financial records of the school to the concerned Authority. Learned counsel further informs that the petitioner has brought on record letters dated 18.07.2019 and 27.07.2019 by way of Annexure-6 which he wrote to the District Education Officer, Arwal addressing him that he is going to superannuate from his service on 31.07.2019 but till date the retired Clerk Anil Kumar has not handed over him the financial records of the school. Learned counsel informs that during the pendency of the writ petition, an F.I.R. bearing Kinjar P.S. Case No. 01 of 2021 dated 05.01.2021 has been instituted against the petitioner on the basis of the direction of the District Programme Officer (Establishment), Arwal



contained in Memo No. 1262 dated 29.12.2020 without informing the controlling authority of the petitioner, being the Director, Primary Education.

7. Learned counsel further submitted that the petitioner by filing the supplementary affidavit has brought on record two documents to demonstrate that he had already handed over partial charge on 10.08.2019, which was duly recognized by the In-charge Headmaster namely, Krishnandan Prasad. He further submitted that there was no question of lodging the F.I.R. against the petitioner for the same allegation to coerce the petitioner and the same is not sustainable. The petitioner has submitted an application to grant him “No Dues Certificate” and grant him full pension and gratuity. The petitioner in support of his claim has relied upon the paragraph No.8 of the judgment of the Hon’ble Supreme Court rendered in the case of ***Dev Prakash Tewari v. U.P. Coop. Institutional Service Board reported in (2014) 7 SCC 260*** which is reproduced hereunder:

“8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

The petitioner under aforesaid circumstances has



claimed full payment of gratuity and pension.

8. *Per contra*, learned counsel for the respondent submitted that the petitioner has not given charge to the Incharge Headmaster or any authority concerned, in spite of several reminders given to him. The accounts could not be matched due to non submission of financial records which allegedly amounted to misappropriation of fund. The In-charge Headmaster of the School lodged F.I.R. bearing Kinjar P.S. Case No. 01/2021 dated 05.01.2021 on the basis of direction of the District Programme Officer (Establishment), Arwal. The petitioner was served with charge memo in form 'ka' as per Rule 43(b) of the Bihar Pension Rules vide letter no. 698 dated 02.08.2021 by the District Education Officer. Thereafter, the District Programme Officer (Establishment) vide Memo No. 967 dated 18.08.2021 sanctioned payment of approved provisional pension (90%) of total amount of Rs.46332/- and the amount has been credited in the Bank account of the petitioner on 24.08.2021 vide Bill No. 190/2020-21 dated 18.08.2021. Learned counsel further submitted that action is in accordance with the Bihar Pension Rules and procedure has been followed in accordance with Rules and the notification dated 30.01.2019. He further submitted that the instant writ application is premature being devoid of merit and is fit to be dismissed.



9. Heard the parties.

10. The petitioner is aggrieved by non-payment of monthly pension and commuted value of pension since the date of his retirement till the present date. Petitioner had joined as Assistant Teacher and had retired from the post of In-charge Principal of Mahavir High School, Jhunathi, Arwal on 31.07.2019. The respondents have withheld 10% of pension amount and gratuity on the alleged ground that the petitioner having not handed over the charge and had also not submitted the financial records to the Incharge Principal. The District Programme Officer (Establishment), Arwal directed the In-charge Principal to lodge an F.I.R. being Kinjar P.S. Case No. 01 of 2021 dated 05.01.2021. Petitioner has stated in supplementary affidavit that he had given charge and had submitted all the documents relating to the affairs of the scheme to the In-charge Principal and there was no reason in absence of any *mens rea* to either misappropriate the fund or plunder the public money even assuming the fact that the petitioner had not submitted the financial records to the In-charge Principal.

11. The action of the District Programme Officer (Establishment), Arwal is arbitrary and illegal so far as he had directed the In-charge Principal of the School to lodge an F.I.R. without determining and quantifying any amount which has



been allegedly misappropriated on account of non-furnishing of financial records by the petitioner.

12. This Court deprecates the action of the District Programme Officer (Establishment), Arwal and the In-charge Principal to have acted whimsically in exercise of their administrative power just to harass the petitioner and by taking further coercive measure by lodging F.I.R. against the petitioner which is totally unmindful and disrespectful act of the District Programme Officer (Establishment), Arwal.

13. In the present case, no departmental proceeding or any criminal case was pending against the petitioner. The action of the respondent in withholding the payment of gratuity and pension is illegal. It has already been dealt with in the previous paragraphs that lodging of the F.I.R. during the pendency of the writ petition to deny the benefit of pension and gratuity is not sustainable.

14. The State Government has amended Rule 43 of the Bihar Pension Rules, 1950 vide notification dated 21.01.2019 by which in Rule 43, Sub Rule (d) has been inserted. After the said Rules having been amended, in the similar matter with respect to recovery from the retired employees, the Apex Court vide judgment and order dated 18.02.2020 in case of **Dr. Hira Lal v. State of Bihar & Ors.** reported in (2020) 4 SCC



346 has held the recovery to be illegal.

15. The State cannot be permitted to deny pensionary benefits to the retired employees who had already superannuated before coming into force of the notification dated 21.01.2019 on the basis of frivolous F.I.R. The notification dated 21.01.2019 will not come in a way to deny the pensionary benefit to the petitioner.

16. The law is well settled that pension is not a bounty. The principle of law is well settled by the Apex Court in the case of *D.S. Nakara and Ors. Vs. Union of India* reported in *(1983) 1 SCC 305*. The said proposition has recently been followed in *Assistant General Manager and Ors. v. Radhey Shyam Pandey* reported in *(2020) 6 SCC 438*.

17. Considering the aforesaid fact, the departmental proceeding initiated against the petitioner is hereby quashed and the petitioner must be paid forthwith all the remaining dues on account of retiral dues including full pension. The petitioner, if so advised, may file a detailed representation before the Director, Higher Education, Government of Bihar, Patna. The Director, Higher Education, Government of Bihar, Patna must take appropriate action against the District Programme Officer (Establishment), Arwal and take a final decision on the representation of the petitioner within a period of six weeks



from the date of filing of the representation.

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

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.07.2023
Transmission Date	N.A.

