

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7530 of 2023

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Ganauri Prasad S/o Late Ram Prasad Rai @ Ram Prasad Rai @ Ram Prasad
Gop, Resident of Village-Saidpura, P.S.-Nagarnausa, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department, of Health,
Govt. of Bihar, Patna.
2. The Director in Chief (Disease Control, Public Health Para Medical) Health
Services, Bihar, Patna.
3. The Regional Additional Director, Health Services, Patna Division, Patna.
4. The District Treasury Officer, Patna.
5. The Principal 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. Anuj Kumar, AC to SC-12.
For the Accountant General:	:	Mr. Arun Kumar, Arun, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 18-09-2023

Heard Mr. Shiv Kumar, learned counsel appearing
on behalf of the petitioner; Mr. Anuj Kumar, learned AC to SC-
12 for the State and Mr. Arun Kumar Arun, learned counsel for
the Accountant General, Bihar.

2. Learned counsel appearing on behalf of the
petitioner submits that the petitioner is aggrieved by the non-
speaking order dated 11.10.2022 contained in Memo No.
1665(4) by which the claim of the petitioner for payment of
retiral benefits including pension, gratuity and leave encashment
has been rejected. The petitioner had earlier approached this



Court in C.W.J.C. No. 4620 of 2021. A co-ordinate Bench of this Court has passed order dated 15.02.2022 directing the concerned authority to consider the case of the petitioner and examine the service particulars and proceed to pass a speaking order as to whether the petitioners are entitled to the relief sought by them or not.

3. Petitioner has challenged the impugned order dated 11.10.2022 contained in Memo No. 1665(4) (Annexure-7) being non-speaking and has been passed without giving opportunity of hearing and is also whimsical considering the fact that the similarly situated employees have been granted pensionary benefits as sought by the petitioner. Petitioner submits that the disciplinary authority has acted in arbitrary manner by picking and choosing without following the principles as laid down by a co-ordinate Bench of this Court in the case of **Raghunandan Mishra Vs. The State of Bihar & Ors.** reported in **1985 PLJR 446** in which this Court interpreted Rule 46 of the Bihar Pension Rules which provides that the payment of pension of a government servant cannot be withheld in case of termination from service. The petitioner has relied on Para-2 of the said judgment which is reproduced hereinafter:

“2. Rule 46 of the Bihar Pension Rules, 1950 reads thus:—

“No pension may be granted to a Government



servant dismissed or removed, for misconduct, insolvency or inefficiency, but to Government servants so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration, provided that the allowance granted to any Government servant, shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate.”

4. Learned counsel further submitted that the disciplinary authority who has taken up the matter of the petitioner and passed the order dated 11.10.2022 by not considering the said judgment and abiding by the provision of Rule 46 of the Bihar Pension Rules has, in fact, acted without authority in accordance with the direction given in Paragraph 4.C(1) of the Bihar State Litigation Policy, 2011.

5. Mr. Anuj Kumar, learned AC to SC-12 submits that a detailed counter affidavit has been filed and no discrimination has been made vis-a-vis employees who were entitled for pension and pensionary benefits. Petitioner has filed a detailed representation and reasoned order has been passed. As such the petitioner is not entitled for the pensionary benefits.

6. On perusal of the order dated 11.10.2022, it appears that the disciplinary authority by not giving opportunity of hearing to the petitioner has hurriedly passed the order without considering the grievance of the petitioner as prayed for in the present writ petition, the order dated 11.10.2022 contained



in Memo No. 1665(4) (Annexure-7) being non-speaking and passed in violation of principal of natural justice is set aside and quashed.

7. Considering the principle laid down in the case of **B. C. Chaturvedi v. Union of India reported in (1995) 6 SCC 749**, this Court remands back the matter before the Disciplinary Authority with a caution that he must not act in arbitrary manner by picking and choosing a particular employee and granting relief. He must be judicious while exercising quasi judicial power or administrative power and the same should be passed in accordance with law strictly adhering to the statutory provisions.

8. Considering the observation made by this Court in the case of **Raghunandan Mishra (supra)** in Para-2, the respondent may consider to make payment of pensionary benefits including pension.

9. Reasoned order is directed to be passed within a period of four weeks from the date of communication of this order after giving the petitioner proper opportunity of hearing and discussing the case of the petitioner in light of the similarly situated persons who have been granted relief as sought for by the petitioner in the present writ petition. In case, the petitioner



is aggrieved for non-payment of retiral benefits or any dues,
then the same is directed to be given to the petitioner within a
period of further two weeks.

10. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.09.2023
Transmission Date	N.A.

