

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10027 of 2022

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Dr. Tapeswar Prasad Son of Late Panchkowri Sao, Resident of Mohalla -
Ramna, Sherghati, Police Station - Sherghati in the District of Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Joint Secretary, Health Department, Government of Bihar, Patna.
5. The Director-in-Chief (Admn.), Health Services, Government of Bihar, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Adv.
For the Respondent/s	:	Mr. S.D. Yadav (AAG-9)
For the Accountant General	:	Mr. Raj Nandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 17-01-2023 Heard learned counsel for the petitioner, learned
counsel for the Respondents and learned counsel for the AG.

The present writ petition has been filed for grant of
100% pension to the petitioner for the following reliefs :

i. *To direct the respondents to grant 100%
Pension to the petitioner as only 90% Pension has been
fixed and is being paid to the petitioner reason best
known to the respondent authorities.*

ii. *Also, to direct the respondents to make
payment of the amount of Gratuity and the amount of*

commutation of Pension.

iii. Also, to direct the respondents to make payment of statutory/penal interest at the rate of 12% per annum over the admitted dues amount of Pension and other Pensionary benefits.

iv. Also, for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.

Learned counsel for the petitioner submits that petitioner was appointed on the post of Medical Officer in the year 1981 and subsequently promoted to the post of Director -in-Chief and retired on 31.07.2020. After retirement, petitioner submitted all the relevant papers for fixation of Pension and also for payment of other Retirement Benefits amount i.e. Gratuity, Leave Encashment, G.P.F., Group Insurance etc. but even after lapse of about 2 years till date neither the amount of Gratuity and Commutation of Pension has been paid to the petitioner nor 100% Pension has been granted to him rather only 90% Pension has been granted to the petitioner. It is specific pleading of the petitioner that neither Departmental Proceeding nor any criminal Proceeding relating to department is pending against him.

Learned counsel for the petitioner submits that

amount of G.P.F., Group Insurance and Leave Encashment and 90% of the pension have been paid to the petitioner.

Petitioner, upon non-payment of his other retiral dues, had approached to Service Complaint Redressal Officer, Health Department, who have passed an order dated 21.09.2021 directing the authorities to grant 100% Pension of the petitioner and also directed to pay the entire Gratuity Amount. It has also been ordered to commute the Pension of the petitioner also (Annexure-8 series).

Department has issued no dues certificate in favour of the petitioner but only 90% pension has been granted. Thereafter, petitioner has made several representations (Annexure-9 series). But nothing was paid, thereafter, he filed the present writ petition.

Learned counsel for the petitioner submits that petitioner was served a letter dated 29.10.2020 from Accounts Department by which it has been intimated to him that he is not entitled to pay gratuity amount and Commutation of Pension.

After filing of the writ petition, counter affidavit has been filed. In the said counter affidavit, it has pleaded by the State that payment of Gratuity has been stopped in view of the provisions contained in Rule 43-D of Bihar Pension Rule which

became effective from 21.01.2019, according to which, the payment of 100% Gratuity is not admissible to the petitioner, since criminal proceeding is pending against the petitioner.

Learned counsel for the petitioner submits that he has annexed annexure – 5, which is a criminal case bearing Aurangabad P.S. Case No. 02 of 2015 filed by one Satyendra Narayan Singh. It has been stated by the counsel for the petitioner that the said Satyendra Narayan Singh is nothing but a contractor who used to provide the services and material as the owner of outsourcing agency, against whom the petitioner has made a detailed complaint vide letter no. 1770 of 18.12.2014. In the said complaint, the petitioner has categorically indicated to the Principal Secretary that the said contractor used to provide generator services for 24 hours but received payment for 34 hours in a day. The petitioner has also raised discrepancies in his services. Not only that, he was found involved and charge sheeted accused for outraging modesty of the female working in the hospital. Petitioner has also raised irregularities in the financial bid by way of saving loss of Rs. 2 crores of the Government. The said informant has also filed a false case against the petitioner under SC/ST Protection of Atrocities Act, which was found false by the police as well. The said letter

(annexure-6) is the indicator that there is an inimical relation between the petitioner and the alleged owner of the outsourcing agency namely Satyendra Narayan Singh.

Learned counsel for the petitioner submits that the Health Department and Principal Secretary instead of taking any action or to set up an inquiry against the owner of outsourcing agency, started taking action against the petitioner on the basis of case filed by him.

Upon going through the documents and hearing the parties, I am of the consistent view that the provision of Section 43-d of Bihar Pension Rule, added in the Bihar Pension Rule by virtue of amendment on 21.01.2019, in which Gratuity has to be ceased when it has been found that Judicial or departmental proceedings are pending against employee prior to his retirement, shall be applicable only when the judicial proceedings or departmental proceedings is filed by the employer. Here the case is quite different, from Annexure – 6, which is dated 18.12.2014 sent to Principal Secretary, Health Department itself clear that complaint has been made against the said informant, who in retaliation filed this case against the petitioner being a complaint case under Section 156(4) of the Cr.P.C. registered as Aurangabad P.S. Case No. 02 of 2015.

It is also important to mention here that when petitioner approached to the Service Complaint Redressal Officer, Health Department then orders were passed in favour of the petitioner. But the said order was not been complied and his Gratuity was stopped on the ground that charge sheet has been filed in a case which has been filed by a stranger, who is nothing but an owner of outsourcing agency against whom petitioner has complained, it is an unfortunate affair.

In this view of the matter, the decision of the State for stopping the Gratuity is hereby set-aside including the letter dated 29.10.2020 issued by Senior Accounts Officer and respondents-State is directed to assure the payment of the Gratuity to the petitioner within 60 days as Section 43-d of Bihar Pension Rule shall not be applicable in the case of present petitioner because judicial proceeding is not pending on the instance of the State.

With this direction, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

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