

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10015 of 2023

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Rajendra Mishra S/o Late Ram Sihasan Mishra, R/o Village- Badd, P.S.-
Karakat, District- Rohtas presently residing at Tara Kunj, Road No. 6, Gola
Road, P.S.- Rupaspur, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Social Welfare Department, Government of Bihar,

Old Secretariat, Patna.
4. The Director, Integrated Child Development Service, Indira Bhawan, 2nd

Floor, Boring Canal Road, Patna.
5. The Collector, Bhojpur, Ara.
6. The District Program Officer, ICDS, Bhojpur, Ara.
7. The Child Development Programme Officer, Sahar, Bhojpur.
8. The Principal Accountant General, Bihar, Veerchand Patel Marg, Patna.
9. The Treasury Officer, Bhojpur, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate
	:	Mr. Ashish, Advocate
For the A.G., Bihar	:	Mrs. Nivedita Nirvikar, Sr. Advocate
	:	Mr. Somesh Kumar, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
	:	Mr. Abhishek Singh, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-11-2023

Heard Mr. D.K. Sinha, learned Sr. counsel appearing

on behalf of the petitioner, Mrs. Nivedita Nirvikar, learned counsel appearing on behalf of the Accountant General, Bihar and Mr. Gyan Prakash Ojha, learned GA-7 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner submits that the Commissioner and Secretary of the Welfare Department by communication contained in letter no.80 dated 07.02.1996 had requested the Secretaries of various departments of the State of Bihar to forward the list of surplus employees on deputation in the I.C.D.S. Directorate. The government came out with a policy that those employees, who were found to be in surplus before the effective date of 16.11.1999 being the cut-off date, were to be rehabilitated and if their services were found to be satisfactory then those deputationists would also become eligible to be considered for absorption. Learned counsel submits that petitioner was relieved to join I.C.D.S., Directorate under Welfare Department, vide Memo No.Stha-2/1565 dated 13.12.1996, as would appear from the Annexure-2 to the writ petition and also from its corresponding paragraph no.7. Learned counsel further submits that in an identical case, as that of the petitioner, one employee namely Chanarik Baithn had preferred writ petition bearing

CWJC No.6834 of 2017, which was disposed vide order dated 20.08.2018 and the State being aggrieved with the said writ order, preferred LPA No.1293 of 2019 (State of Bihar and Ors. vs. Chanarik Baithn), which was dismissed vide order dated 17.10.2023 and the following observation was made, granting relief to the petitioner:

“28. The Government having extracted the work from the deputationists for long and a policy having been taken not to repatriate those who were deputed before a cut-off date; i.e.16.11.1999, there is no reason to deviate in solitary instances from the policy decision taken. The judgments inter parties regulate the issue dealt with.

29. In the aforesaid background, the observation of the Hon'ble Single Judge in the impugned judgment; that refusing to grant benefit of pension on account of the fact that the petitioner has already superannuated is completely wrong and arbitrary exercise of power is fully justified. The Writ Court rightly directed the authority to treat the respondent petitioner to have been absorbed on and from the date of deputation and be granted pensionary benefit in terms of pension rule operational at that time.

30. We direct the first respondent herein to be treated as having been regularized from the date of his deputation and his further service in the Government shall be reckoned for the purpose of pension. The entire

pensionary benefits due to the first respondent shall be paid to him within a period of three months from today and the further pension due to him shall be commenced from the fourth month from today.

31. The Letters Patent Appeal is dismissed with exemplary cost of Rs. 10,000/- (ten thousand) payable to the first respondent together with the other retirement dues applicable to him; for the attitude of the Government, which does not ordinarily behave a welfare State; especially in the teeth of the inter-parties judgment. It is also made clear that if the pension dues are not paid within the time stipulated, it shall carry 9% interest from the beginning of the fourth month from today, till it is paid. If any gratuity remains to be paid, it goes without saying that it shall carry interest @ 9% from the expiry of one month from the date of his retirement till the date of payment; if not already paid.

32. The Letters Patent Appeal is dismissed with exemplary costs as indicated hereinabove.”

3. Considering the above admitted position, the Additional Chief Secretary, Social Welfare Department, Government of Bihar, Patna is directed to take steps to make payment of retiral dues and fix pension of the petitioner and other terminal benefits, within a period of 3 months, on the basis of the terms and conditions fixed by the Division Bench in paragraph no.30 of the said LPA No.1293 of 2019 (State of

Bihar and Ors. vs. Chanarik Baithn), alongwith difference of salary as a result of re-fixation of pay scale, as well as, interest on account of delay in making payment.

4. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2023
Transmission Date	NA