IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15435 of 2022

Surya Deo Prasad Chaudhary son of Late Kishun Ram Chaudhary, Resident of Town/P.O./P.S.-Warisaliganj, Near Raj Talkies, District-Nawada, PIN-805130.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Bihar, Patna.
3. The District Magistrate, Nalanda (at Biharsharif).
4. The District Supply Officer, Nalanda (at Biharsharif).
5. The Sub Divisional Officer, Hilsa, District-Nalanda (at Biharsharif).
6. The Accountant General, Bihar, Patna.
7. The Sr. Accounts Officer, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh, Adv.
For the State	:	Mr. Vijay Kumar Singh, AC to AAG 5
For the Accountant General	:	Mr. Ram Yash Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 08-12-2023

Heard Mr. Sidhendra Narayan Singh, learned counsel appearing on behalf of the petitioner and Mr. Vijay Kumar Sinha, learned counsel for the State as well as Mr. Ram Yash Singh, learned counsel for the Accountant General, Bihar.

2. The petitioner, who superannuated on 31.08.2016 from the post of Supply Inspector under the Department of Food Supply and Commerce, Bihar, Patna, filed the present writ petition invoking the extraordinary jurisdiction of this Court

under Article 226 of the Constitution of India seeking quashing of Memo No. 3722 dated 16.09.2020 passed by the respondent no. 2 to the extent whereby the period from 03.10.2008 to 31.08.2016 has been though regularised by treating it as extraordinary leave but the same has not been counted for the purposes of post retiral benefits. The petitioner also sought quashing of the consequential letter No. 331 dated 11.03.2022, whereby after making calculation in terms of the impugned Memo dated 16.09.2020/Annexure-16, the service book and pension form have been sent to the Senior Accounts Officer for further action. The petitioner further prays for a direction to calculate the total legally admissible qualifying service period for the purposes of pension and ensure all the retiral benefits thereupon.

3. The short facts which led to the filing of the writ petition is that initially the petitioner along with others were appointed as Adult Education Supervisor under the Department of Adult Education vide Memo No. 434 dated 29.03.1980. However, after serving more than 12 years the petitioner along with others were retrenched from the said project vide Memo No. 1266 dated 17.06.1992. The petitioner on being aggrieved approached before this Court in CWJC No. 5036 of 1992 which

was disposed of on 24.05.1996. However, despite the order of the Hon'ble Court, no action was taken on the part of the respondent, compelling the petitioner to file MJC and the petitioner was appointed as Project Officer, Non -Formal Education, Directorate of Adult Education, Bihar, Patna against the sanctioned and permanent post.

4. It is the further case of the petitioner, that unfortunately he was again terminated/retrenched under Memo No. 312 dated 01.10.2012 on account of closure of the project. Finally, pursuant to the decision taken by the Government of Bihar, the retrenched Project Officers, including the petitioner, were appointed under Memo No. 467 dated 11.02.2006 as Supply Inspector under the Department of Food Supply and Commerce, Bihar, Patna. In pursuant to the aforesaid order issued by the Department, the petitioner submitted his joining on 18.02.2006 along with other Supply Officers and accordingly the petitioner was posted in Tharthari Block under Hilsa Sub-Division. Thereafter, the petitioner continuously worked till 02.10.2008 but suddenly he became ill and on 03.10.2008 he made an application for leave. It is further submitted that in fact on account of severe depression, his illness continued for long, though the petitioner used to send his application for leave

before the SDO, Hilsa continuously. However, owing to his ailment, he could not join his service again and ultimately the petitioner reached the age of superannuation i.e., 31.08.2016. In the meantime, in compliance of the order dated 19.04.2011 passed in CWJC No. 20780 of 2010, the retrenchment period in between 1992 to 1998 of the petitioner and others have been regularised by the Government for the purposes of calculating increment, pay fixation and pension vide resolution contained in Memo No. 1366 dated 15.07.2013.

5. Having been superannuated, the petitioner filed a representation for grant of retiral benefits as well as other admissible dues but found no response, thus he was compelled to move before this Court in CWJC No. 16190 of 2019 for a direction to ensure payment of retiral benefits and other dues. The aforesaid writ petition was disposed of vide order dated 16.06.2020 directing the respondents to dispose of the claim of the petitioner by passing a reasoned and speaking order considering his mental depression. Thereafter, the claim of the petitioner was duly considered by the respondent no. 2 and finally Memo No. 3722 dated 16.09.2020 came to be passed, which is impugned herein.

6. While assailing the impugned order as well as the

consequential order, learned counsel for the petitioner submitted that admittedly the respondent no. 2, the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna has regularized the services of the petitioner with effect from 03.10.2008 till the date of his superannuation on 31.08.2016 by treating it as extraordinary leave but without salary, apart from such period not being counted for the retiral dues.

7. Learned counsel for the petitioner submitted at the Bar that the petitioner is not claiming his salary for the said period on the principle of "No Work No Pay". However this is the admitted fact that during such period of absence, which later on regularised, the petitioner has neither been put to any departmental proceeding nor any adverse order has been passed against him. Moreover, after superannuation of the petitioner, the period has been regularised accepting the claim of the petitioner that he was suffering from mental illness and was under treatment of doctors. It has also been admitted that time to time, petitiioner has also informed the authority, but not to the concerned authority. He further made reliance on a judgment rendered by the Division Bench of this Court in the case of ***The State of Bihar & Ors. vs. Parmeshwar Nath Mishra*** since

reported in ***2017(1) PLJR 92.*** On the strength of the aforesaid judgment, he vehemently submitted that once no disciplinary proceedings has been initiated against the petitioner for his absence, such period cannot be ignored for the purposes of counting retiral benefits, that too, when the period of absence has been regularsied as extraordinary leave, after having found the petitioner was sick.

8. On the other hand, learned counsel for the State, while refuting the contention of the petitioner, referred to the averments made in the counter affidavit filed on behalf of the respondent No. 4 as well as respondent No. 6 has submitted that since the petitioner had never discharged the duty for the period with effect from 03.10.2008 to 31.08.2016 and thus benevolent approach has been taken by the respondent authorities and instead of treating it as a breakage in service, it has been rightly regularised by treating it as extraordinary leave but not for the purposes of salary and retiral benefits. He further submits that the petitioner has been given proper opportunity of hearing in terms of the order of this Court and thereupon finally the order has been passed in accordance with law by the Secretary to the Government, Food and Consumer Protection Department, Bihar.

9. This Court has heard the learned counsel for the

parties and meticulously perused the materials available on record. From the impugned order, as contained in Memo no. 3722 dated 16.09.2020, it appears to this Court that the respondent, Secretary to the Government, Food and Consumer Protection Department has found no infirmity in the medical certificates produced in support of the illness of the petitioner and further he has also opined that the case of the petitioner is required to be considered on a humanitarian ground as he was suffering from mental illness. The respondent No. 2 further found that the information of illness along with medical prescription have also been sent by the petitioner, but not to the concerned authorities. Thus, considering the aforesaid facts on the premise that no departmental proceeding has ever been initiated, the period of absence shall be treated as extraordinary leave. However, while coming to the aforesaid conclusion he has directed that the period in question shall not be treated for the purposes of salary as well as pension. To the extent of not counting the period for the purposes of pension, this Court has reservation that once the petitioner has never been put to departmental proceeding nor any adverse order has been passed in course of absence owing to his illness from 03.10.2008 to 31.08.2016 at this stage after more than seven years of his retirement, would amount to major punishment, without any departmental proceeding or judicial enquiry, contrary to the settled principle of law. Moreover, it would be worth noting that petitioner has not been allowed any salary for the period of his absence, which was neither challenged nor this Court finds any fault as the same is based upon the principles of no work no salary. This Court also finds substance in the submission of the petitioner that his case is covered by the Division Bench of this Court in the case of ***State of Bihar vs. Parmeshwar Nath Mishra*** (supra), where, in the identical situation, the learned Court has held that "once no disciplinary proceedings have been initiated against an employee for absence, the retiral benefits cannot be declined for the reason that he was absent from duty for long period".

10. In view of the aforesaid facts and circumstances, the impugned order, as contained in Memo no. 3722 dated 16.09.2020 as also the consequential order contained in Letter No. 331 dated 11.03.2022, to the extent whereby the period in question has not been counted for pension, is hereby quashed. Accordingly, the writ petition stands allowed to the extent indicated hereinabove.

11. The respondent authorities, especially the

respondent no. 2, is directed to consider the claim of the petitioner for payment of pensionary benefits afresh within a period of eight weeks from the date of receipt/production of a copy of this order.

12. No order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.12.2023
Transmission Date	