

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.651 of 2023

=====

Md. Jafar Rakib @ Md. Zafar Rakib S/o Late Abdur Rakib, Resident of
Village - Chhoti Masjid Lane, Hassan Colony Sipahi Tola, Rose Cottage P.S. -
K. Hat, District - Purnea.

... .. Petitioner

Versus

1. The State of Bihar through the Addl. Chief Secretary General Administration Department, Bihar, Patna.
2. The Additional Secretary General Administration Department, Bihar, Patna.
3. The Joint Secretary General Administration Department, Bihar, Patna.
4. The Accountant General, Bihar, Patna.
5. The Addl. Chief Secretary Finance Department, Bihar, Patna.
6. The Special Executive Officer, General Administration Department Bihar, Patna.
7. The District Magistrate, Katihar.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Prakash Mahto, Advocate Mr. Jawed Ahmad, Advocate
For the Respondent/s	:	Mr. Md. Irshad, AC to SC-1
For the AG	:	Mr. Dr. Anand Kumar, Advocate Mr. Rajan Prakash, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 02-05-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioner in the present case is seeking payment of
his post-retiral benefits i.e. gratuity, unutilised leave encashment,
differences of salary for the period of suspension, subsistence
allowance from the date of suspension i.e. 25.07.2018 to the date
of revocation i.e. 30.06.2020, earned leave from 27.05.2018 to
02.07.2018 and other consequential benefits with panel interest.



3. Learned counsel for the petitioner submits that the petitioner was a member of the Bihar Administrative Service who vide Memo No. 27 dated 30.06.2020 issued under signature of Additional Secretary of the Government, General Administration Department, Bihar, Patna was proceeded against in a disciplinary proceeding. He was facing prosecution at the instance of a subordinate staff who alleged that the petitioner had committed an offence under Section 377 of the Indian Penal Code and had lodged Nagar Sahayak, Katihar P.S. Case No. 318 of 2018.

4. It is stated that the petitioner was suspended from service vide Memo No. 9899 dated 25.07.2018. Admittedly, the petitioner had been promoted to the post of Additional Secretary vide Resolution No. 8223 dated 20.06.2018 but till 25.07.2018 i.e. the date on which he was placed under suspension, he could not join on the promoted post.

5. Learned counsel submits that the petitioner attained his age of superannuation on 30.06.2020, his suspension was revoked in the first half of 30.06.2020 and on the same day, the petitioner submitted his joining on his promoted post.

6. Learned counsel further submits that in the disciplinary proceeding which continued after retirement of the petitioner, the competent authority decided to forfeit/deduct 20%



of the pension of the petitioner for five years. The order of punishment was passed vide Department's Resolution No. 7286 dated 17.05.2022. A review preferred by the petitioner against the order of punishment failed vide Resolution Memo No. 12128 dated 18.07.2022.

7. Learned counsel submits that the order of punishment against the petitioner has been set aside by this Court in CWJC No. 482 of 2023 and the disciplinary authority has been directed to take a fresh decision within a period of four months.

8. Learned counsel submits that prior to passing of the order withholding 20% pension of the petitioner, the competent authority had sanctioned provisional pension to the extent of 90% on the ground that the disciplinary proceeding was still pending against the petitioner. It is the grievance of the petitioner that even though the petitioner had submitted his joining as an Additional Secretary, the petitioner is not being treated on the said post and the benefits of the said post is not being made available to the petitioner.

9. A counter affidavit has been filed on behalf of the State. According to the counter affidavit, the amount equal to unutilised earned leave of the petitioner has been sanctioned in his favour vide Department's Order No. 11650 dated 08.12.2020. An



order contained in Department's Letter No. 11652 dated 08.12.2020 has been issued for payment of group insurance in favour of the petitioner.

10. As regards the treatment of the period of suspension is concerned, it is stated that the petitioner's application in this regard has been examined by the disciplinary authority and the disciplinary authority has vide Resolution contained in Memo No. 19541 dated 03.11.2022 decided to treat the suspension period of the petitioner in the following manner:-

(i) for the period of suspension nothing would be admissible to the petitioner save and except subsistence allowance and (ii) the period of suspension would be referred for the purpose of pension only.

11. As regards demand of the petitioner for increment/fixing equivalent pension after his joining on the promoted post on 30.06.2020 is concerned, it is the stand of the respondents that the suspension of the petitioner was revoked vide Department's Resolution Memo No. 633 dated 30.06.2020 w.e.f. the afternoon of 30th June, 2020 which means that he remained under suspension till 30.06.2020 i.e. till his date of retirement, therefore, his joining application dated 30.06.2020 in the Department was infructuous.



12. At this stage, learned counsel for the petitioner has relied upon the Rule 58 of the Bihar Service Code to submit that because the petitioner was deprived from submitting his joining because of the reasons beyond his control, the respondents are obliged to accept his joining simultaneously with the order of revocation of suspension of the petitioner.

13. On the other hand, on this point, learned counsel for the State submits that the monetary benefits of the promotional post would have been admissible to the petitioner only upon his submitting joining on the said post and because in this case, the petitioner had not joined the promoted post between 20.06.2018 and 25.07.2018 and he remained under suspension till the date of his retirement, he would not be entitled for the benefit of the post of Additional Secretary.

14. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that so far as the order of punishment of withholdment of 20% pension for 5 years of the petitioner is concerned, the same has already been set aside by this Court and the matter has been remitted to the competent authority.

15. In view of the setting aside of the order of punishment imposed upon the petitioner, the respondent



authorities are liable to consider payment of his pensionary benefits in accordance with Rules. So far as the other claims of the petitioner are concerned, the petitioner is at liberty to file a representation before the competent authority raising his claims which should be supported by material particulars and the petitioner would be at liberty to make a submission before the competent authority on the applicability of Rule 58 of the Bihar Service Code.

16. This Court, therefore, grants liberty to the petitioner to file a detail representation before the Additional Chief Secretary, General Administration Department, Government of Bihar (respondent no. 1) within a period of one month from today which will be considered after giving an opportunity of hearing to the petitioner and an appropriate order shall be passed by respondent no. 1 within three months from the date of receipt of the representation.

17. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

lekhi/-sushma/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.05.2023
Transmission Date	

