IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10014 of 2023

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Abdul Hafeez @ Md. Abdul Hafeez, S/o Md. Ali Hasan, R/o Habibpur, P.O.- Sahebganj, District- Sahebganj, State- Jharkhand.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Director, Directorate of Urdu, Bihar, Patna.
3. The District Magistrate, Bhagalpur.
4. The Deputy Development Commissioner, Bhagalpur.
5. The Sub Divisional Officer, Kahalgaon, District- Bhagalpur.
6. The Block Development Officer, Pirpaiti, District- Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Prakash, Advocate Mr. Sourav Suman, Advocate Ms. Prerna Kant, Advocate
For the Respondent/s	:	Mrs. Kumari Amrita, GP- 3

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 08-02-2024

Heard Mr. Ravi Prakash, learned counsel appearing on behalf of the petitioner and Mrs. Kumari Amrita, learned Government Pleader No. 3, for the State.

2. A supplementary counter affidavit has been filed on behalf of respondent no.3, the same is taken on record.

3. The petitioner, who superannuated on 31.01.2019 from the post of Urdu Translator at Bachhawara Block, Begusarai has filed the present writ petition seeking a direction upon the respondents to ensure payment of all his post retiral benefits. The details of which has been duly mentioned in para.9 of the reply to the counter affidavit filed on behalf of the petitioner, which reads as follows:

> *"9. That with regards to the contents of the paragraph no.9, it is humbly submitted that the petitioner was granted certain payments as laid down in the answering paragraph, however an amount of Rupees 1,24,320 (admitted dues against leave encashment as reflected from ANNEXURE-P/6), Rupees7,34,397 (admitted dues against benefits of first ACP and second MACP as reflected from ANNEXURE-P/5), entire amount of gratuity and 100% pension amount (as reflected from paragraph 12 of the counter affidavit filed by the answering respondents themselves) are still unpaid after lapse of around 5 years and this bare fact shows the futility of the averments made by the answering respondents with regard to the notion of the admitted dues as construed by them."*

4. It is submitted on behalf of the petitioner that despite the petitioner having been superannuated on 31.01.2019, when the petitioner has not been accorded his pre and post retiral benefits, he had earlier approached before this Court in C.W.J.C. No. 15848 of 2021, which writ petition was disposed of with a liberty to the petitioner to approach before the concerned District Magistrate, who shall consider the claim of the petitioner and pass a reasoned and speaking order.

5. In the light of the aforesaid order, the petitioner made representation before the District Magistrate, Bhagalpur, who ultimately considering the representation of the petitioner

has come out with the order dated 03.05.2023, rejecting the claim of the petitioner and directed the concerned Block Development Officer to issue Prapatra 'Ka' by providing all necessary evidence within a week and to proceed with further action.

6. In the light of the order passed by the District Magistrate, Bhagalpur, the concerned Block Development Officer issued letter no. 898 dated 08.05.2023 directing the petitioner to deposit an amount of Rs.32,27,846.23, failing which it is stated that F.I.R. would be lodged against the petitioner. Both the orders are under challenge in the present writ petition.

7. It is the case of the petitioner that admittedly the date on which the petitioner superannuated, there had neither been any departmental or judicial proceeding and, as such, in any view of the matter withholding of retiral benefits, including pension, gratuity and leave encahsment, was not at all justified. Further submission has been made that so far the impugned orders are concerned, i.e. in relation to an incidence, which took place in the year 2015 and, as such, any direction for initiation of a departmental proceeding or issuance of Memo of charge with regard to an incidence, which took place in the year, 2015 is barred under Rule 43(b)(a)(ii) of the Bihar Pension Rules,

1950. Reliance has also been made on a judgment rendered by the learned Division Bench of this Court in the case of **Urmila Sharma @ Urmila Singh Vs. The State of Bihar & Ors** (C.W.J.C. No. 12943 of 2009) and analogous cases.

8. Learned counsel for the petitioner further drew the attention of this Court to the averments made in the supplementary counter affidavit, filed on behalf of respondent no.3, wherein a categorical assertion has been made that admittedly the direction was given to the concerned Block Development Officer for submission of Prapatra 'Ka' against the petitioner, but the departmental proceeding could not be initiated in view of the fact that the period of four years from the date of retirement of the petitioner had already been elapsed.

9. A fair submission has been made on behalf of the respondent State that since the petitioner had already superannuated and the event is of 2015 and, as such, initiation of departmental proceeding is completely barred by Rule 43(b)(a)(ii) of the Bihar Pension Rules, 1950. However, further submission has been made that since an amount of Rs.32,27,846.23 has been found recoverable from the petitioner, the petitioner has been subjected to Certificate proceeding and accordingly a Certificate Case No.30 of 2023-24 has been instituted against him and the same is pending before the

Deputy Development Commissioner-cum-Certificate Officer, Bhagalpur.

10. Considering the fact, which is in a narrow compass that the date on which the petitioner superannuated, there had not been any departmental or judicial proceeding and thus withholding of any retiral benefit without there being any proceeding, in any view of the matter cannot be said to be justified and also taking note of the fact that the Department has taken a conscious decision not to initiate a departmental proceeding in the light of the specific bar, as provided under proviso to rule a(ii) of Rule 43(b) of the Bihar Pension Rules, 1950, this Court does not find any reason or occasion to interfere with the impugned order, whereby a direction has been issued to the concerned Block Development Officer for submission of Prapatra “Ka” and in the light thereof consequential letter has been issued directing the petitioner to deposit an amount of Rs. 32,27,846.23, have already lost their effect. Thus, in such circumstances, this Court directs the respondent no. 3 to ensure payment of all the pre and post retiral benefits to the petitioner preferably within a period of 12 weeks from the date of receipt/production of a copy of this order. Needless to observe that the Certificate proceeding pending against the petitioner will take its own course.

11. In view of the aforesaid facts and circumstances, the present writ petition stands disposed of with the direction noted hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2024
Transmission Date	NA