

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15744 of 2024

Smriti Rekha Roy, Wife of Late Arup Kumar Roy, Resident of Nursing Quarter, Sadar Hospital Campus, Sadar Hospital, Bhagwan Bazar, Chapra At Present-103, Satwati Complex, Kankarbagh Main Road, P.S.-Kankarbagh, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Health, Govt. of Bihar, Patna.
2. The Director-in-Chief, Health Services, Bihar, Patna.
3. The Superintendent, N.M.C.H., Patna.
4. The Principal J.N.M., School, N.M.C.H., Patna.
5. The Treasury Officer, Bihar, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhitabh Kumar, Advocate
For the State	:	Mr. N. P. Yadav, SC-23
		Mr. Sudhir Kr. Singh, AC to SC-23
For the AG, Bihar	:	Mrs. Nivedita Nirvikar, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-11-2024 Heard Mr. Abhitabh Kumar, learned counsel

 appearing on behalf of the petitioner, Mr. N. P. Yadav, learned

 SC-23, along with Mr. Sudhir Kr. Singh, learned AC to SC-23

 appearing on behalf of the State and Mrs. Nivedita Nirvikar,

 learned Sr. counsel appearing on behalf of the Accountant

 General, Bihar.

2. The petitioner, in paragraph no. 1 of the present writ petition, has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

“That this is an application for issuance of a



writ in the nature of mandamus for commanding and directing the respondent authorities to make benefit of Third M.A.C.P. for which the petitioner is entitled for same on the ground that petitioner has serving 32 years 6 months and 9 days without interruption, and after benefit of third M.A.C.P. the authority concerned revised the pension of the petitioner and also payment the differences of salary and pension and pay the interest on the delayed payment and litigation cost for unnecessary harassment to the petitioner taking into consideration that she has retired on 31.01.2021, and even after filing the several representations with all the relevant documents, her third M.A.C.P. and revised pension have not been paid.”

3. Learned counsel appearing on behalf of the petitioner informs that the case of the petitioner has duly been considered by the Special Secretary, Health Department for making payment of retiral dues and other benefits to the petitioner, as contained in Memo No.97(6) dated 30.01.2021 and subsequent to that the Director, Health Services has also requested the Superintendent, Nalanda Medical College and Hospital (hereinafter referred to as ‘NMCH’) for considering the case of the petitioner, who had retired on 31.01.2021. The petitioner has filed the present writ petition, after waiting for considerable period of time, in view of the steps to be taken for making payment of her retiral dues and for fixation of her pension, after granting her the financial progression on account



of ACP and MACP scheme.

4. *Per contra*, Mr. Sudhir Kr. Singh, learned counsel for the State informs that there cannot be any reason to fix pension of the petitioner, in accordance with law, after granting benefit of ACP and MACP, in case the petitioner is entitled for the same. Learned counsel also informs this Court that the present writ petition is also devoid of the very fact, as to whether, the petitioner has faced any disciplinary action or whether any penalty order has been passed against the petitioner, affecting her right in any manner, so far as, the reliefs in the present writ petition is concerned or the petitioner may have been promoted to the next higher post, which don't call for any financial upgradation.

5. Having heard the rival submissions made on behalf of the parties, as well as, considering the admitted fact that the petitioner had retired on 31.01.2021 from the post of Junior Sister Tutor from the NMCH, Patna and the Special Secretary, Government of Bihar, vide order contained in Memo no.97(6) dated 30.01.2021, had directed for granting the petitioner all the retiral benefits for the post from which she had retired, in accordance with law. Memo no.97(6) dated 30.01.2021 was communicated to the Superintendent of the NMCH, Patna; to



the Registrar, the Bihar Nurses Registration Council, Patna; to the concerned Treasury Officer; to the Registrar In-charge, Patna and to the Minister of the Health Department, Bihar, Patna as well as, the I.T. Manager, Health Department, Bihar, Patna, however, no steps were taken in light of the said communication contained in memo no. 97(6) dated. 30.01.2021.

6. The Director -in- Chief (Nursing) -cum- *Adhyaksh*, Bihar Nurses Registration Council, Patna, referring to the order contained in Memo No.97(6) dated 30.01.2021, had sent all the service particulars relating to the petitioner, including her service book, along with certificate of pay to the Superintendent, NMCH, Patna. It appears that the Superintendent, NMCH, Patna, inspite of such communication, has harassed the petitioner for the reason best known to him, by not fixing the pension of the petitioner, in accordance with law.

7. The petitioner, in the present writ petition seeks that her pension should be fixed after granting the financial progression, on account of ACP/MACP, to which she is entitled for, having rendered 32 years of service in light of the law laid down by the Apex Court in the case of ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** reported in ***2023 SCC OnLine SC 496*** and the recent judgment dated 28.06.2024 of



the Hon'ble Full Bench of this Court passed in *CWJC No. 18727 of 2017 (Kamlanand Thakur Vs. The State of Bihar)* and other analogous matter.

8. I find that no statement or information is contained in the writ petition, as to whether, the petitioner was ever given any due promotion or whether she had faced any disciplinary action or any penalty had been imposed upon her by any appropriate Authority. If no disciplinary action or disciplinary proceeding had been faced by the petitioner, there is no reason, as to why, the pension of the petitioner has not been fixed till date.

9. The Superintendent, NMCH is hereby directed to forthwith take steps, so that, the petitioner, who has retired on 30.01.2021, may not be harassed any further.

10. With the aforesaid direction/observation, the present writ petition stands disposed of.

(Purnendu Singh, J.)

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