

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8445 of 2021

Md. Wasiquir Rahman S/o- Late Md. Samidur Rahman R/o- At and P.O.-
Gaiyari, Ward No- 12, P.S. and District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer, Araria.
4. The District Programme Officer (Estt.), District, Araria.
5. The Treasury Officer, Araria.
6. The Headmaster-cum- Drawing and Disbursing Officer, Thana Middle School, Farbesganj, District- Araria.
7. The Headmaster, Primary School, Osri, Farbeshganj, District- Araria.
8. The Accountant General, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate Mr. Pranab Jha, Advocate Mr. Santosh Singh, Advocate Mr. Prabhaojot Singh, Advocate Mr. Gyanendra Kumar Diwakar, Advocate
For the Respondent/s	:	Mr. Madhukar Mishra, AC to SC-16

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-08-2023

Heard Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. Madhukar Mishra, learned AC to SC-16 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved for non-fixation of his pension and payment of gratuity due to



inaction of the District Programme Officer (Establishment), Araria, who has not even delved into to comply with the order passed by the Division Bench of this Court in Letter Patent Appeal No. 77 of 2008 arising out of CWJW No. 13836 of 2001. He has drawn attention to Paragraphs No. 15 to 21 of the order passed by the Division Bench. He further submits that petitioner preferred Special Leave Petition (C) No. 1380 of 2012, which was dismissed vide order dated 21.08.2012. Learned counsel on these backgrounds submitted that the District Programme Officer (Establishment), Araria, in spite of the specific direction of this Court in above LPA, which has not been interfered by the Apex Court in any manner has sat tight over the grievance of the petitioner by not taking slips in compliance of the observation and direction of the Division Bench of this Court vide order dated 24.11.2011.

3. Learned counsel appearing on behalf of the State submits that the District Programme Officer (Establishment), Araria, being the sanctioning authority has to comply with the Division Bench direction by making enquiry into the matter and sanction the due amount of



pension payable to the petitioner. He further submits that it is admitted that the petitioner was appointed in the year 1988 and, thereafter, for the period 1990 till 1997, he remained absent, however, he has further admitted that the petitioner was allowed to continue in service and he had retired in November, 2011.

4. Learned counsel for the State in these background submits that the District Programme Officer (Establishment), Araria, by not adhering to comply with the order of Division Bench has in fact shown disregard to the order of this Court. He further submits that today in compliance of the oral direction of this Court, he had made a telephonic communication with the District Programme Officer (Establishment) in presence of the learned counsel appearing on behalf of the petitioner, but in spite of having been clarified about the order passed by the Division Bench of this Court, he is reluctant to take any action with respect to sanctioning of pension payable to the petitioner and gratuity in accordance with law nor he is ready to pass any order.

5. Having considered the rival submission made



by the parties, this Court can only observe that the District Programme Officer (Establishment), Araria, has not only disobeyed the order of this Court, this Court finds him incompetent officer, who has not understood the Division Bench direction/order which was/is required to be complied with soon after the Apex Court had not interfered with the order of the Division Bench in rejecting the appeal filed by the petitioner in the year 2012.

6. The malafide action of the District Programme Officer (Establishment), Araria, in not following the reasons assigned by the Division Bench and overwhelmed with his private opinion that the Special Leave Petition (C) No. 1380 of 2012 has been dismissed by the Apex Court he has formed a private opinion which is much of a humor and fanciful which an honest man competent to discharge of his office cannot be expected of. The Hon'ble Apex Court in case of *Union of India v. Kuldeep Singh* reported in *2004 (2) SCC 590* has held that the discretion is to know through law what is just to quote:

“Discretion is to know through law what is just. Where a judge has and exercises a judicial discretion his order is unappealable unless he did so under a mistake of law or fact or in disregard of



principle, or after taking into account irrelevant matters. It will help to show this if it can be shown that there were no materials on which he could exercise his discretion in the way he did.....”

Their Lordships of Hon'ble Supreme Court further proceeded to hold as under:-

“20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary) In its ordinary meaning, the word “discretion” signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary)

21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office out to confine himself (per Lord Halsbury, L.C., in Sharp v. Wakefield). (Also see S.G. Jaisinghani v. Union of India)

22. The word “discretion’ standing single and unsupported by circumstances signifies



exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. "The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper and passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable." Said Lord Camden, L.C.J., in Hindson and Kersey".

28. *In view of above in case the statutory discretion vests in an authority then such discretion should be exercised not in arbitrary, whimsical and fanciful manner. It must be reflected from the outcome of event that the authority concerned has exercised discretion within the sound principle of law, skill and wisdom with vigilant circumspection and care. The discretionary power imposes a heavy responsibility on a person or authority. The latitude or liberty accorded by statute, Circular or Order to the higher authority does not permit to exercise such power in unjust and unfair manner. In the case of Kuldeep Singh (supra), their Lordships of Apex Court further held as under:-*

"If a certain latitude or liberty is accorded by a statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of discretion, and prevents it from being wholly absolute, capricious, or exempt from review."

7. The Constitution Bench of Hon'ble Supreme Court in a case reported in *AIR 1991 SC 101; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others* had repelled the presumption that person holding high office does not commit wrong. Discretion enjoyed by the persons holding high offices should not be left to the good sense of individuals.



Relevant portion from the judgment of Delhi Transport Corporation (supra) is reproduced as under:-

“There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.”

8. The Hon'ble Supreme Court in the case of *State of NCT of Delhi and another v. Sanjeev alias Bittoo* reported in *2005 (5) SCC 181* held that if the administrative or judicial power has been exercised on non-consideration or non-application of mind to relevant factors, such exercise shall stand vitiated.

9. The action of the District Programme Officer (Establishment), Araria shows that he has not only committed jurisdictional error, but the available records reflect that, without regard to the facts and laws, by



exercising his pure will and whims, has exercised arbitrarily, capriciously and perversely, being adamant in restraining himself by not complying with the orders of this Court.

10. Considering the deliberate inaction on the part of the District Programme Officer (Establishment), Araria, the Additional Chief Secretary, Education Department, Government of Bihar, is directed to take appropriate action in the matter relating to the payment of pension and gratuity to the petitioner by calling service records relating to the petitioner, thereafter, he is directed to comply with the direction passed in LPA No. 77 of 2008 considering the admitted fact that the petitioner had retired in the year 2011 and the total period of pensionable service is required to be taken from the date of appointment of the petitioner in the year 1988 in accordance with the provision of Bihar Pension Rules, 1950, and if it is found that the pension and gratuity as claimed by the petitioner is admissible, appropriate steps be taken to direct the concerned authority to sanction the pension and gratuity of the petitioner by forwarding the letter to the Accountant



General, Bihar.

11. The above exercise is directed to be completed within a period of six weeks from the date of communication of this order.

12. With above observation and direction, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.08.2023
Transmission Date	N/A

