

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9168 of 2022

Prabhu Nath Prasad Singh @ Prabhu Nath Singh, Son of Late Rudra Deo Singh, Resident of Village- Reothithgarh, P.O. Reothith, Police Station- Baikunthpur, District- Gopalganj at present resides at 16, Ashirwad, near PHED Water Tank, Krishna Nagar, Booty Road, Police Station- Bariatu, District- Ranchi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director, Department of Health, Govt. of Bihar, Patna.
3. The Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Director, Provident Fund, Bihar, Patna.
5. The District Provident Fund Officer, Patna.
6. The Treasury Officer, Sichai Bhawan, Patna.
7. The Accountant General, Vir Chand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Advocate Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG-9 Mr. Anil Kumar Verma, AC to AAG-9
For the AG, Bihar	:	Mrs. Ritika Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-06-2025

This Court has heard Mr. Aditya Narayan Singh, with Mr. Satyendra Narayan Singh, learned Advocates for the petitioner and Mr. Anil Kumar Verma, learned Advocate for the State. The Accountant General, Bihar is represented through Mrs. Ritika Rani, learned Advocate.

2. The grievance of the petitioner, in the present writ petition, is confined to three folds; Firstly, the respondent authorities be directed to issue a formal order of superannuation



of the petitioner with effect from 28.02.2022, the date on which he attained the age of 67 years, as a Medical Officer; Secondly, for a direction to accept the pension forms/documents of the petitioner so that his pension and other retiral benefits be calculated and paid to him, and thirdly, to issue a direction to ensure payment of arrears of salary w.e.f. 11.08.1997 till the date of retirement with due promotion and increment of salary.

3. The reliefs, aforementioned, have been sought for in the premise of the facts that the petitioner after completing the MBBS Course and on being found eligible joined Ranchi Medical College vide notification no.7(2) dated 02.08.1981 in the pay scale of Rs.610-1155/-. The appointment of the petitioner was only for six months, but later on it was regularized w.e.f. 02.06.1981. By the order dated 04.12.1984, the petitioner was posted against the reserved post in the district of Ranchi and thereafter vide notification dated 18.05.1985, issued by the Department of Health, Government of Bihar he was posted as District Phalaria Officer, Ranchi. Subsequently, by the notification no.404, dated 15.05.1990 (Annexure-5 to the writ petition) issued by the Department of Health, Government of Bihar, the petitioner was posted as Resident Medical Officer in the Rajendra Medical College, Ranchi (hereinafter referred to



as 'the RMC, Ranchi'). The petitioner worked as Resident Medical Officer, RMC, Ranchi till 14.12.1996, whereafter vide notification as contained in Memo No. 1029(2) dated 14.12.1996, the copy of which is marked as Annexure-6, issued under the Department of Health, Government of Bihar, the petitioner along with various other Medical Officers were transferred to different places, the name of petitioner finds at serial no. 131 with remark find out the native district of the petitioner and placed in the next establishment.

4. In compliance of the aforementioned notification, the petitioner submitted his joining in the office of the Directorate, Health, Patna, but to utter surprise no posting order has ever been issued and in this way the petitioner was kept waiting for posting for a number of years and finally he attained the age of superannuation on 28.02.2022.

5. Learned Advocate for the petitioner submitted that the aforementioned facts are admitted and it has not been confronted by the respondent authorities at any stage. However, when the petitioner approached to the office concerned to pay all his retiral benefits and salary for the period, in question, no positive order came to be passed. Since the petitioner was kept waiting for posting for such a long period and, as such, there is



no laches or unwillingness on the part of the petitioner to discharge his duty as a Medical Officer in any of the Health Centre or Hospital, denial of the pension and retiral benefits by excluding the period from 1997 to the date of his retirement is wholly illegal and unsustainable in law. During the interregnum period of 1997 to 2022, at no point of time any departmental proceeding, much less show-cause notice has been issued against the petitioner. It is the case of the petitioner that time to time, he approached the office of competent authority, as he was posted in the Establishment, but to no avail.

6. Mr. Aditya Narayan Singh, learned Advocate for the petitioner further submitted that since the representations preferred before the different authorities were lost, the same could not be brought on record. Taking this Court through the supplementary affidavits, further contention has been made that vide letter dated 13.12.2024, the petitioner was asked to clarify about his payment of salary while he was under waiting for posting. It has been informed to the Department that the petitioner was paid salary up to 29.01.1996 and thereafter he has not been paid salary for any month. It is also made clear that while the petitioner was waiting for posting he was extended Time Bound Promotion under Memo No. 388 dated 11.08.1997



with effect from 25.06.1991. During the pendency of the writ petition, a letter dated 21.02.2025 has also been served upon the petitioner informing him that 90% of provisional pension and earned leave of 240 days have been sanctioned and the payment order also came to be issued, but there is no whisper with regard to payment of GPF amount and other retiral benefits. Referring to letter dated 20.03.2025, the copy of which is marked as Annexure-P/13, it is further contended that the Department of Finance, Government of Bihar requested the Additional Secretary, Department of Health, Government of Bihar to regularize the services of the petitioner from 27.01.1996 till 28.02.2022 so that pension and leave encashment up to 28.02.2022 be paid. The basic salary of the petitioner has been shown as Rs.62,200/- as on 01.01.2016, but it has not been disclosed in the pay scale of the petitioner as existing on 28.02.2022, the date on which he superannuated. Based on the aforementioned letters issued by the Department concerned, the Office of the Accountant General, Bihar also issued Pension Payment Order fixing the pension on the basis of Rs.62,200/- and granted pension by treating the petitioner in service only 14 years, 7 months and 2 days, whereas the basic pay of the petitioner comes to Rs.1,42,400/-.



7. Learned Advocate for the petitioner lastly contended that to cover up the delay and laches, the respondent authorities have adopted malafide approach and denied the legal claim of the petitioner for his salary for the waiting for posting period and other admissible retiral benefits, including the pension and other dues. Placing reliance upon the decision rendered in the case of *Shiv Nandan Mahto Vs. State of Bihar & Ors.*, reported in, (2013) 11 SCC 626 it is urged that the petitioner is kept out of service due to mistake committed by respondent authorities and not at all of the petitioner. Hence, he cannot be denied the benefit of back wages on the ground that he had not worked for the period, in question. Reliance has also been placed on a decision rendered by the Division Bench of this Court in the case of *State of Bihar & Ors. Vs. Shail Devi*, reported in 2011 (2) PLJR 448 and also of *Kamini Kumari Vs. The State of Bihar & Ors.* (L.P.A. No. 1219 of 2023).

8. Mr. Anil Kumar Verma, learned Advocate for the State dispelling the aforesaid contention has submitted that even if the case of the petitioner is accepted for the sake of argument, the facts of the present case cannot be improved that after issuance of notification long back in the year 1996, the petitioner kept mum and sat silently for a pretty long time and at



no point of time he ever approached before the authorities concerned or this Court. The petitioner, who slept over his right for over two decades has surreptitiously moved this Court seeking a direction for payment of salary w.e.f. 1997 till the date of his superannuation without, admittedly, discharging any duty as a Medical Officer. The Department has shown benevolence and taking humanitarian ground have allowed the provisional pension and the payment of unutilized earned leave. Since the petitioner has remained absent from duty w.e.f. 28.01.1996 till the date of his superannuation i.e. 28.02.2022, therefore, a decision on the aforesaid period of absence shall be taken after proposed departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950'). It is further contended that after proper examination of the record, while issuing the letter as contained in Memo No. 230(2) dated 18.02.2025 it has been found that the petitioner has never endorsed his signature in the attendance register at the Headquarter and thus any claim of the salary for the period waiting for posting and treating such period for retiral benefits and other dues is wholly illegal and unjustified. Heavy reliance has been placed on a decision rendered by the Apex Court in the case of **Vijay S. Sathaye Vs. Indian Airlines Ltd. & Ors.**,



reported in **(2013) 10 SCC 253**, wherein the Hon'ble Court held that an employee has right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining or reporting for duty for long period. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service resulting of termination of service automatically without requiring any further order from the employer.

9. Having given anxious consideration to the submissions advanced by the learned Advocate for the respective parties and on perusal of the materials available on record, the question posed before this Court for consideration is in limited bound as to whether the period w.e.f. 27.01.1996 till date of superannuation of petitioner i.e. 28.02.2022 shall be counted for the purposes of salary and other retiral benefits, including pension.

10. This Court has also been informed that till date the proposal for initiation of the departmental proceeding has not been finalized and there is no departmental proceeding either initiated or pending against the petitioner.

11. The sheet anchor in the case in hand is the notification contained in Memo No. 1029(2) dated 14.12.1996



whereby the various Medical Officers were posted to different places and in the aforesaid exercise the petitioner, who was holding the post of Medical Officer was directed to be posted in the Establishment after obtaining his Home district. It is the case of the petitioner that in pursuant to the aforesaid notification he submitted his joining in the Establishment of Directorate, Health Services, Bihar, Patna. The respondent authorities failed to produce any further notification/order/letter that at any point of time any order of posting has been issued with respect to the petitioner. Further it is not the case of the respondents that the petitioner had disobeyed the order of the Department or failed to submit his joining on the place of posting. It is this reason, perhaps the Department has never proceeded against the petitioner either for absence without leave or non-compliance of any order to join the post. There cannot be any cessation of automatic service or without there being any statutory rule in this regard. It would be suffice to remind that Rule 76 of the Bihar Service Code, which empowers the State Government/Competent Authority to the extent summarily dismiss the Government servant who has remained absent from his post without any departmental proceeding held to be ultra vires in the case of **Deokinandan Prasad Vs. State of Bihar &**



Ors., reported in, (1971) 2 SCC 330.

12. This Court is also afraid to the submissions made on behalf of the respondent State authorities and their stand that they proposed to initiate departmental proceeding under Rule 43(b) of the Rules, 1950. The scope of Rule 43(b) vis-a-vis Rule 139(c) of the Rules, 1950 was duly deliberated and discussed in the case of **State of Bihar & Others Vs. Md Idris Ansari**, reported in, **1995 Supp (3) SCC 56**, wherein the Hon'ble Court in no uncertain term held that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired Government servant, it must be shown that in departmental proceedings or judicial proceedings the concerned Government servant is found guilty of grave misconduct or have caused pecuniary loss to the Government by misconduct or negligence. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings.

13. Further, a government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the employee/respondent was not thoroughly



satisfactory. More so, this power can be exercised in consonance with the principle of natural justice only within three years from the date of the sanctioning of the pension for the first time.

14. Indubitably, till date the petitioner has not been held guilty of any grave misconduct or caused pecuniary loss to the State Government, either in a departmental proceeding or judicial proceeding..

15. Reliance upon the decision rendered in the case of **Vijay S. Sathaye** (supra) does not help the respondents, as the facts of the case in both the cases are distinct. In case of **Vijay S. Sathaye** (supra), the Petitioner joined the service of the erstwhile Indian Airlines Limited in the year 1972 as First Officer and he was promoted to the post of Captain and further as Commander. In the meanwhile, the respondent Indian Airlines Limited came out with a Voluntary Retirement Scheme. In terms of the condition prescribed in the scheme, the petitioner upon completing 20 years of service has tendered his application for VRS w.e.f. 12.11.1994. The Petitioner was informed vide letter dated 11.11.1994 that he should continue in service till the time decision is taken. However, the petitioner did not attend the duty after 12.11.1994 and joined the services of Blue Dart Ltd. When no response was made a writ petition,



bearing Writ Petition No. 19143 of 1994 came to be filed directing the respondents to accept the petitioner's application for voluntary retirement, however the same came to be rejected. The petitioner preferred another Writ Petition No. 21384 of 1994 challenging the order of rejection. However, during the pendency of the writ petition, the petitioner attained the age of superannuation. The said writ petition came to be dismissed by the learned Single Judge. Aggrieved, the petitioner preferred Writ Appeal No. 2415 of 2002, which has also been dismissed. Hence the matter brought to the Apex Court by way of challenge to both the order. The Hon'ble Court taking note of the fact that the petitioner was asked to continue in service till the decision is taken on his application, but he did not attend the office of the respondents after 12.11.1994, hence it is held that the petitioner had voluntarily abandoned the services of the respondents and there was no requirement on the part of the respondents to pass any order on his application as it was a clear cut case of voluntary abandonment of service and accordingly the Special Leave Petition (SLP) preferred by the petitioner came to be rejected.

16. The Hon'ble Court while dismissing the SLP, taking note of various decisions that abandonment or



relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf held in para. 12 as follows:

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

17. So far the forfeiture of past services on account of any interruption in the service is concerned, Rule 103 of the Rules, 1950 would apply in case of unauthorized absence or the grounds mentioned therein. The reliance of the petitioner in the case of **Shail Devi** (supra) clarified the position in the matter of application of Rule 103 of the Rules, 1950. For proper appreciation, this Court encapsulate paragraph 14 of the said decision.

“14. There is also no dispute



that in terms of Bihar Pension Rules, the qualifying period for earning pension is only ten years and as such, there would be no difficulty for this Court in holding that the husband of the respondent writ petitioner was eligible for payment of his post retirement benefit including pension even in terms of Rule 103 of the Bihar Pension Rules. That apart, the appellants can also not be allowed to make a premium of their own lapse, inasmuch as, it is also an admitted fact that the husband of the respondent writ petitioner had submitted his joining report on 14.10.1993 and thereafter was kept waiting for his posting till the date of his superannuation i.e. 30.11.1997. Nothing in fact has been brought on record to show that the appellants had ever rejected such joining report of the husband of the respondent writ petitioner till the date of his reaching the age of superannuation and therefore, any decision taken after almost five years of his retirement and in fact after three years of his death on 9.10.2002 vide Annexure-A to the counter affidavit for the purposes of denying the post retiral benefit as also family pension to the Respondent writ petitioner on the face of record was both arbitrary and illegal as also factually



incorrect holding that a period of ten years of continuance service was not completed by the husband of the respondent writ-petitioner in between 20.11.1961 to 26.5.1974 whereas the same was in fact more than twelve and half years”

18. So far the reliance placed on a Division Bench decision in the case of **Kamini Kumari** (supra) is concerned, the same would not be applicable to the facts of this case, as in the afore-noted case, the services of the petitioner and others were terminated and with respect to some of the persons, who have already superannuated, entire retiral benefits were withheld after holding a departmental enquiry based upon a C.B.I. report of the year 2004. The learned Division Bench of this Court while examining the decision of the learned Single Judge, whereby the learned Single Judge affirmed their termination and withholding of entire retiral benefits, have held that the action of the respondent State Authorities is *per se* illegal and unsustainable in law in view of the gross violation of the principles of natural justice and there being no application of rule 43(b) and rule 139 of the Bihar Pension Rules, 1950.

19. The materials placed on record also suggests that conscious decision has been taken at the level of the department, especially the Department of Finance, Government



of Bihar whereby vide letter dated 20.03.2025 request has been made to the Additional Secretary, Department of Health, Government of Bihar to regularize the services of the petitioner from 27.01.1996 till 28.02.2022 so that the pension and leave encashment up to 28.02.2022 be paid. 90% of provisional pension and leave encashment for 240 days have already been sanctioned, however, based upon the basic pay of Rs.62,200/- as on 01.01.2016 by ignoring the date of superannuation of the petitioner i.e. on 28.02.2022.

20. In the case in hand, there has never been any intention shown on the part of petitioner of abandonment or relinquishment over the petitioner on unauthorized leave. The respondent State authorities cannot be allowed to make premium of their own lapse. In the opinion of this Court, with due regard, the decision rendered in the case of **Vijay S. Sathaye** (supra) would not be applicable.

21. Notwithstanding the discussions made hereinabove, this Court cannot lose sight of the fact that nonetheless the petitioner was kept waiting for posting for a pretty long time, but he did not approach to the authorities concerned or the Court for his posting and salary for the period of waiting for posting. Conveniently, the petitioner approached



this Court in the year 2022 after the date of his superannuation.

22. It is pertinent to observe that the reliance of the petitioner on a decision rendered in the case of **Shiv Nandan Mahto** (supra) wherein the Hon'ble Apex Court held that the applicant cannot be denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service, in the opinion of this Court, is not applicable in the facts of this Case, as in the afore-noted case, the appellant was appointed against a permanent post of Clerk in the High School and subsequently the School was granted permission by the Directorate of Secondary Education, Government of Bihar. The School was inspected by the special Board; however, in the inspection report, the name of the appellant was wrongly shown as Librarian in place of Clerk. On account of this mistake, the services of the appellant could not have been taken over. When the matter, on challenge, brought before the Directorate of Secondary Education, Patna, he issued a direction to adjust the appellant against the post of Clerk in any of the School in the aforesaid district. Despite the aforesaid direction, when the appellant did not get any posting order on the post of Clerk, he moved the High Court by way of C.W.J.C. No. 516 of 1990 with a prayer seeking reinstatement and



consequential benefits. The Court accepted the plea of the appellant and directed to be given the benefit of continuity of service and other benefits. However, he was denied remuneration on the principle of “no work, no pay”. The order of the learned Single Judge was also affirmed by the learned Division Bench and on challenge it came up for consideration before the Hon’ble Supreme Court. The Hon’ble Supreme Court on being found that the High Court has proceeded on the assumption that the appellant was kept out of service on account of suspension, has been pleased to set aside both the orders of the High Court and held that the appellant could not have been denied the benefit of back-wages on the ground that he had not worked for the period when he was illegally kept out of service.

23. In the afore-noted case, the appellant was all along vigilant and approached before all the authorities concerned and on being found that the services of the appellant could not have been approved on account of the mistake on the part of the respondent authorities, the same was corrected; however, when no posting order was issued, he approached this Court immediately in the year 1990.

24. In the case in hand, the petitioner submitted his joining in the Directorate of Health Services on 29.01.1996 and



he was kept waiting for posting but he did not approach either before any authority concerned nor the High Court for redressal of his grievance.

25. It would be suffice to observe that the Apex Court in somewhat in identical facts in the case of **State of Bihar and Others Vs. Kripa Nand Singh and Another**, reported in, **(2014) 14 SCC 375**, has held that 'no work, no pay' is the rule and 'no work, yet pay' is the exception. Compulsory waiting period is one such exception. But to qualify for the exception, an employee has to establish that he had made earnest endeavours and yet that he was not able to join duty for no fault on his part. He must also show his earnestness to join duty. Voluntary waiting period is not covered by the exception. In the said case, the respondent was appointed as a Teacher vide order dated 05.02.1986 and directed to join duties within 21 days. He reported for duty on 24.02.1986 but was not allowed to join due to lack of vacancy. He waited for five years to get another posting but neither made any representation nor approached before the Court of law during the said period for joining of his duty at any other place; thus, his conduct shows that he was at fault. Consequently, the period between 24.02.1986 to 16.07.1991 could not be treated as waiting for posting but was



in fact held to be voluntary waiting period. In the aforesaid circumstances, the order of the learned Single Judge as well as the learned Division Bench came to be set aside and the respondent-Teacher was not allowed the salary for such period.

26. It is not in dispute that the petitioner has ever made any endeavour to bring the matter to notice of the higher authorities and sought for posting. Nothing has been brought on record, which suggests that right from 1996 till the date of his superannuation on 28.02.2022, the petitioner has approached before any authority concerned or the Court of law; hence, the decision rendered in the case of **Kripa Nand Singh** (supra) is fully applicable in the case in hand.

27. Now the question before this Court would arise, as to whether in such circumstances, the petitioner shall be entitled to get the reliefs prayed for in the writ petition. To answer the aforesaid question, it would be prudent to refer to a decision rendered by the Hon'ble Supreme Court in the case of **Union of India & Anr. Vs. Tarsem Singh**, reported in, **(2008) 8 SCC 648**. It would be apt and proper to encapsulate para.7 of the said decision.

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches



(where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is



concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

28. From the facts discussed in the premise of law quoted herienabove, there is no hesitation to hold that though there is a long delay in seeking remedy, but it is a case relating to continuous wrong on account of the fact that petitioner was placed waiting for posting and thereafter no posting order has ever been issued with respect to the petitioner, hence the justice will be served, if the petitioner shall be extended all the retiral benefits and other dues by treating the date of his superannuation on 28.02.2022. However, it is made clear that since the petitioner has neither discharged his duty nor any effort has been taken on his behalf to get an order of posting in his favour and allowed him to discharge the duty, applying the principles of “No Work, No Pay”, the petitioner shall not be entitled to get salary for the interregnum period where he was kept waiting for posting.

29. The writ petition stands allowed to the extent



indicated hereinabove. However, the parties shall bear their own cost(s).

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2025
Transmission Date	NA

