

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6479 of 2008

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Shankar Jha, son of Late Madhukant Jha, resident of village Chainpur, P.S. Bargaon, District Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, New Secretariat, Patna
2. The Superintending Engineer, Public Health Engineering Circle, Saharsa, District Saharsa
3. The Executive Engineer, Public Health Engineering Division, Saharsa, District Saharsa
4. the Executive Engineer, Public Health Engineering Division, Madhepura, District Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : **Mr. Ashok Kumar Mishra, Advocate**

For the Respondent/s : **AC to GP No. 4**

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 31-08-2015

Heard Sri Ashok Kumar Mishra, learned counsel for the petitioner and learned AC to GP No. 4.

Initially, the petitioner had approached this court by filing the present writ petition under Section 226 of the Constitution of India, with a prayer to direct the respondents to pay arrear of salary to the petitioner for the period during which he was put under suspension i.e. from 28.2.1992 to 5.3.1998. During the pendency of the writ petition certain developments had taken place, and as such, in the year 2015 an interlocutory application was filed vide I.A. No. 2292 of 2015 wherein, a prayer was made to quash Order No. 20 dated 30.6. 2009 passed by the respondent / Engineer –In- Chief and



Letter dated 9.11.2009 issued by the Chief Engineer vide Annexure - “6” and “7” respectively to the interlocutory application. By Annexure - “6” in view of superannuation of earlier Conducting Officer new Conducting Officer was appointed and vide Annexure – “7” second show cause notice was issued to the petitioner. The said letter was sent along with the enquiry report. By order dated 2.4.2015 this court directed to treat the interlocutory application as part of the writ petition. Subsequently, supplementary counter affidavits were filed on behalf of the respondent. In the supplementary counter affidavit filed on 27th August 2015 it has been indicated that in the departmental proceeding final order has been passed and it has been decided to pay salary to the petitioner for the suspension period and also on the recommendation of the Conducting Officer decision has been taken to recover the amount of Rs. 2,80,739/- on monthly basis.

Short fact of the case is that on an allegation of theft committed in the Store an F.I.R. was lodged in the year 1992 of-course against unknown, however, during investigation name of the petitioner and others transpired, and as such, petitioner along with others were charge sheeted to face trial. At the same time the petitioner was put under suspension on 28.2.1992. Finally, in the year 1996 the petitioner was acquitted from the criminal charges vide judgment dated 23.5.1996 by the Judicial Magistrate Ist Class,



Saharsa. After the petitioner was acquitted from the criminal charges the petitioner approached this court by filing a writ petition vide CWJC No. 4681 of 1997 against the order of suspension dated 1.4.1992. A bench of this court considering the fact that the petitioner was acquitted in the criminal case, quashed the order of suspension vide its order dated 18.8.1997. While at the time of quashing the impugned order, this court further directed as follows:-

“..... This Court, however, makes it clear that by quashing this order of suspension, this Court does not, in any way, infringe the right of the respondents to initiate, if not already initiated, any departmental proceeding against the petitioner on the relevant allegations.....”

However, the matter relating to departmental proceeding was kept pending. Thereafter, the petitioner was persuaded to approach this court by filing the present writ petition initially for payment of salary for the suspension period, and thereafter, by amendment petition he had sought prayer for quashing of the second show cause notice as well as the recommendation of the Conducting Officer regarding recovery of the amount as indicated above.

It is true that this Court had directed to treat the interlocutory application as part of the writ petition, but in any event,

this court had not allowed the prayer for quashing of the second show cause notice. Since during the pendency of the writ petition final order has already been passed in the departmental proceeding in which the petitioner has been allowed to draw salary for the suspension period and also direction has been issued for recovery of the amount, as indicated above from the monthly salary of the petitioner, the Court is of the opinion that after conclusion of the departmental proceeding and passing of the final order, there is no point for examining the second show cause notice. The writ petition stands dismissed.

If the petitioner feels aggrieved with the order of the disciplinary authority, he would be at liberty to avail appropriate remedy.

(Rakesh Kumar, J)

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