

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8983 of 2000

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Shyam Kishore Prasad Singh, age 57 years, son of Shri Yogendra Prasad Singh,
172- Anandpuri, West Boring Canal Road, P.S. S.K. Puri, Town and District Patna.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna.
2. The Joint Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna.
3. The Deputy Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. R.N. Mukhopadhaya, Advocate
For the : M/s. Ashok Kumar Choudhary, AAG-13 and
Anil Kumar Tiwary, A.C. to AAG-13

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 01-04-2015

I have heard learned counsel for the petitioner
and the State.

The petitioner seeks quashing of Annexure-1,
which is an order dated 22.01.2000 passed by the State
authority and by which following punishments have been
given :

- a) Censure to be recorded in the year 1989-90.
- b) Stoppage of further promotion.
- c) Recovery of Rs.5 lakhs as taken from the
salary of the petitioner and, if necessary,
recovery to be made also from the retiral
benefits of the petitioner.

It appears from the order dated 11.09.2000 that the petitioner had filed an appeal before the Governor of Bihar, however, vide Annexure-2 the representation has been forwarded to the Secretary of the Department by the Governor and no order was passed on that day.

The petitioner claims to have been promoted as Executive Engineer on 1st March, 1984 and was subsequently transferred and posted as Executive Engineer in Subarnarekha Canal Division with effect from 9th December, 1986. The canal digging covering point from 22.535 K.M. to 32.308 K.M. was to be done under his supervision. However, the matter was enquired by the Flying Squad and, on the basis of report submitted by it, a charge sheet was served upon the petitioner and he was directed to show cause in terms of Rule 55 A of the Civil Services (Classification, Control & Appeal) Rules. It also appears from the impugned order that a supplementary charge sheet was also served. It appears from the impugned order that the replies given by him to both the show cause notices and charges framed were considered at the level of the State Government and the charges mentioned in Annexure-1 were found to have been proved and, thus, the punishment has been inflicted.

Learned counsel submits that the petitioner



preferred an appeal before the Governor of Bihar, however, vide Annexure-2, it was referred to the State authorities itself. In such a situation, the writ petition was filed. Vide order dated 11.09.2000, State was granted time for filing counter affidavit and interim relief was granted to the petitioner to the extent that if he has already not been reverted back to the lower post pursuant to Annexure-3, he shall not be reverted till the pendency of the writ application. It would also worth mentioning here that the petitioner, even after passing of the impugned order dated 22.01.2000, was granted promotion though the charges were framed against the petitioner and the petitioner had filed his reply on 16.02.1999 itself. The petitioner, during the pendency of the proceeding under Rule 55A of the Rule, was granted promotion to the post of Superintending Engineer, however, vide Annexure-3 he was directed to be reverted back which was stayed by this Court vide the aforesaid order and in the meantime, the petitioner has superannuated on 31.01.2002 working on the post of Superintendent Engineer.

Learned counsel for the petitioner has made diverse submissions. It has been contended that there cannot be punishment withholding promotion of the employee for all times to come and secondly, that the impugned order has

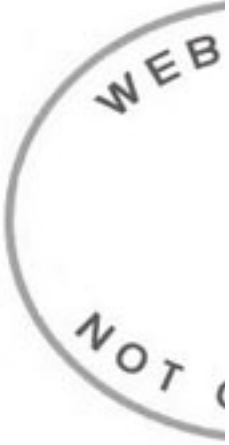


been passed contrary to the provisions contained in Rule 55A of the Rule itself as no reason has been assigned for disbelieving or rejecting the plea or grounds raised by the petitioner in his reply to the show cause notice issued by the department along with the charges. Learned counsel for the petitioner submits that the issue is no longer *res integra* inasmuch as on identical issue having arisen with respect to another delinquent from the same Subarnarekha Canal Project, has been set at rest. The Hon'ble Supreme Court, after considering the issue, has come to the conclusion that the punishment prescribed cannot be passed as, before doing that, the representation made pursuant to the show cause notice has to be taken into consideration before the order is passed.

The decision of the Apex Court has been appended as Annexure 17(1) of the supplementary affidavit filed by the petitioner. The Apex Court has further noticed that there is nothing in the impugned order which shows that any of the several issues raised by the appellant in his reply to the show cause notice were, in fact, considered. No reason has been given by the respondent-authority for holding that the charges were proved except the *ipse dixit* of the disciplinary authority. Thus, the order was set aside.

Same is the situation in the case in hand also.

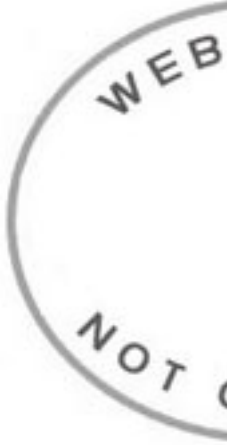
Though Mr. Ashok Kumar Choudhary, learned counsel appearing for the State, has made an effort to show that petitioner's replies have been considered by pointing out to paragraph-19 of the counter affidavit filed on behalf of the respondent nos.1 to 3 but in my considered opinion that would be of no help to the respondents inasmuch as that does not show that the replies of the petitioner were considered and some findings were recorded on that. In paragraph-19 only, this much has been stated that the Government found the matter very serious involving loss of huge amount, therefore, a three member committee was constituted and after receipt of the report of the Committee, the matter was referred to the Flying Squad which has enquired into the matter and on the basis of report of such Flying Squad the proceeding was drawn. However, what happened thereafter has not been explained except that the show cause notices were issued to the petitioner along with the charge sheet on a particular date. There is no averment at all as to in what manner the grounds raised by the petitioner in his reply to the show cause notices were dealt with. There is no averment in the entire counter affidavit also showing that any decision has been taken by any appellate authority



also in the matter of the petitioner.

Be that as it may, this Court would be bound by the decision taken by the Apex Court rendered on the identical issues arising out of same project as contained in Annexure-17.

In my considered opinion, the impugned order contained in Annexure-1 cannot be sustained and has to be set aside. However, it is also a fact that the petitioner has now retired from the service on 31st January, 2002, therefore, to the much extent the issues raised in this writ application has become practically become of academic value specially for punishment nos.(a) and (b), i.e., Censure to be recorded in the year 1989-90 and for withholding promotion. Therefore, the petitioner has also not pursued this writ application so far the issue of censure and for withholding promotion is concerned as in view of the interim relief granted by this Court, the petitioner has retired as Superintending Engineer, i.e., on the promoted post. So far the third punishment, i.e., for recovery of amount of rupees five lakhs as a token amount from the salary or pension of the petitioner is concerned, in view of the fact that the order has already declared to be unsustainable in law, such recovery cannot be permitted to be made.



As a result, if the some amount has been recovered from the salary or pension of the petitioner that would be required to be given back to the petitioner within a period of three months from the date of receipt/production of a copy of this order after calculating the same from the records available with the Government. If the amount is not paid within the aforesaid period of three months, the respondents shall also be liable to pay interest upon it at the rate of 10% per annum as has been held in view of the decision of the Apex Court in the identical manner.

Accordingly, this writ application stands allowed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

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