

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13478 of 2007

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Raghu Sharan Sharma, son of Late Gaya Singh, resident of village Sondiha, P.S.-
Guraru, District- Gaya at present residing at N-9-31-C2 Bridge Enclave Extension
Colony, Sunderpur, Varanasi (U.P.).

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Department of
Water Resources, Government of Bihar, Patna.
2. Commissioner-cum-Secretary, Department of Water Resources, Government of
Bihar, Patna.
3. Engineer-in-Chief-cum-Special Secretary, Department of Water Resources,
Government of Bihar, Patna.
4. Joint Secretary, Department of Water Resources, Government of Bihar, Patna.
5. Deputy Secretary, Department of Water Resources, Government of Bihar,
Patna.
6. Chief Engineer, Department of Water Resources, Siwan District, Siwan.
7. Superintending Engineer, Saran Canal Circle, Gandak Project, Siwan, District-
Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAMASHISH

For the Respondent/s : Mr. (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 27-04-2015

Heard Mr. Ramashish for the petitioner and A.C. to
A.A.G.-5 for the State. A counter affidavit, affirmed by the Under
Secretary, Water Resources Department, Government of Bihar, has
been filed.

The writ application under Article 226 of the
Constitution of India has been filed for issuance of appropriate
writ/order/direction to quash the notification contained in Memo No.
326 dated 5.4.2007 issued by the Deputy Secretary to the Government
in the Department of Water Resources whereby the petitioner, on

conclusion of departmental proceeding, was inflicted punishment in the shape of withholdment of 50% pension for three years and recovery of amount in the sum of Rs. 15,460/-.

While in service of the State, a departmental proceeding was initiated against the petitioner which was allowed to be continued under Section 43B of the Bihar Pension Rules upon his superannuation from service. Certain charges were found to have been proved in the said proceeding whereas some of them were not found proved. The competent authority of the State Government, on a consideration of the inquiry report and after giving a notice in this regard passed a final order in the said proceeding dated 13.12.2001 whereby the petitioner was inflicted punishment of withholdment of 75% pension for 5 years and recovery of amount in the sum of Rs. 15,460/-. The petitioner assailed the aforesaid order in C.W.J.C. No. 6585 of 2002. This Court by order dated 14.9.2006 (Annexure-20) disposed of the writ petition whereby the second show cause notice, which was also impugned, was quashed. The disciplinary authority was directed to issue a fresh show cause notice stating the reasons of its differing with the view of the Enquiry Officer and thereafter pass a fresh order. A time frame was fixed therefor failing which the petitioner was treated to have been absolved of the charges. In the light of the said order, the impugned order contained in Annexure-23

was passed on 5.4.2007.

In the counter affidavit, the respondents have stated as under in paragraph 5:

“5. That in regard to the aforesaid prayer made in paragraph-1 of the writ application it is stated that the aforesaid notification of punishment dated 5.4.2007 (Annexure-23 of the writ application) has been revoked vide notification No. 119 dated 01.02.2011 issued in terms of the order dated 14.9.2006 passed by this Hon'ble Court in C.W.J.C. No. 6585 of 2002 (Annexure-20 of the writ application) as the said notification could not be issued in time fixed by the Hon'ble Court vide the said order. The petitioner was absolved from all the charges and was held entitled for all post retirement benefits. A Copy of the said notification was communicated to the all concerned including the petitioner as well as the Accountant General, Bihar for needful.”

In support of the said statement, the notification dated 1.2.2011 (Annexure-A) has been enclosed wherefrom it appears that the writ petitioner was absolved of all the charges and the punishment earlier notified vide Annexure-23 was cancelled. On the strength of such pleadings, it has been stated on behalf of the State that the writ application has become infructuous.

Learned counsel for the petitioner, at this stage, draws attention of the Court to the operative part of the order dated

14.9.2006 passed in C.W.J.C. No. 6585 of 2002 (Annexure-20) and submits that the terminal dues were directed to be released except pension and gratuity in favour of the petitioner. He, however, submits that pension and part of gratuity have been paid but other dues have not been paid which would follow from the cancellation of the notification inflicting punishment. Counsel for the State, however, submits that there is no such pleadings on the record.

Having regard to the aforesaid, this Court, while dismissing the application as having become infructuous, grants the petitioner liberty to approach the appropriate authority for payment of remaining retiral dues which hitherto remained unpaid to him.

(Kishore Kumar Mandal, J)

Pankaj/-

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