

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13442 of 2011

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Raj Kumar Mishra son of Late Gopaljee Mishra resident of Village-Dularpur,
P.S.-Sadar, Distt.-Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Commissioner, Darbhanga Range, Darbhanga.
3. The District Magistrate, Darbhanga.
4. The Sub-Divisional Officer, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amish Kumar

For the Respondent/s : Mr. Subhash Pd. Singh GA7

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 19-07-2016

Heard Sri Ajay Thakur, learned counsel , who was assisted
by Sri Amish Kumar , learned counsel for the petitioner and Sri
Subhash Prasad Singh, learned GA -7.

The petitioner, who superannuated with effect from
30.6.2008 from the post of Circle Inspector has approached this court
invoking its writ jurisdiction under Article 226 of the Constitution of
India, with a limited prayer to direct the respondents to make
payment of salary and allowances for the period i.e. from 5.6.2002 to
1.9.2003 during which he remained under suspension.

It is case of the petitioner that on certain charges vide order
contained in memo no. 316 dated 5.6.2002 the petitioner was put
under suspension. Thereafter, departmental proceeding was initiated



against him by issuance of memo of charge. It has been claimed that in the departmental proceeding the enquiry officer submitted its report exonerating the petitioner, however the disciplinary authority did not accept the same. In this case on number of occasions conducting officers were changed, however without conclusion of departmental proceeding the petitioner superannuated with effect from 30.06.2008. Learned counsel for the petitioner submits that even after retirement departmental proceeding was not converted under Rule 45B of the Bihar Service Rules. The petitioner thereafter filed several representations for the payment of salary and allowances for the period of his suspension however the respondents have not paid any heed and thereafter he was constrained to approach this court by filing the present writ petition.

In this case by filing counter affidavit the respondents have opposed the prayer of the petitioner.

Sri Subhash Prasad Singh , learned GA No. 7 by way of referring to the statement made in paragraph no. 8 of the counter affidavit submits that cadre of the petitioner was subsequently changed and thereafter the case of petitioner has been referred to the Revenue Department vide letter dated 16.4.2016 for taking final decision. He further submits that petitioner was a habitual offender and he was arrested in a trap case by the sleuths of the Vigilance



Department. A case against the petitioner was registered vide Vigilance P.S. Case No. 9 of 2008 for the offence under section 7/13(2) read with section 13(1)D of the Prevention of Corruption Act 1988. He submits that criminal proceeding is still pending against the petitioner. The fact regarding pendency of criminal case was not disputed by learned counsel for the petitioner. Sri Thakur submits that criminal case is still pending, however he submits that criminal case was initiated much later than the date of order of suspension and criminal case was not having any connection with the earlier departmental proceeding.

Besides hearing learned counsel for the parties I have also perused the material available on record. Fact remains that on record till date nothing has been brought by the state authority to show that departmental proceeding against the petitioner which was initiated in the year 2002 itself has come to an end, rather in view of the statement made in paragraph no. 8 of the counter affidavit of the respondent no. 2 which was filed on 25th April 2016 it is evident that department has requested for taking final decision recently in the year 2016 itself. Meaning thereby, that till date departmental proceeding has not been concluded. The order of suspension was revoked vide Annexure- 'C' to the counter affidavit of the respondent no. 2 vide memo no. 547 dated 1.9.2003. Keeping in

view the fact that petitioner retired in the year 2008 itself and departmental proceeding which was initiated in the year 2002 has not come to an end till date certainly the petitioner is entitled to get all the benefits for the period during which he remained under suspension.

The writ petition is allowed with a direction to the respondents to pay entire salary and other allowances for the period between 5.6.2002 to 1.9.2003 during which the petitioner remained under suspension after adjusting the subsistence allowance, if it was paid. All the formalities must be completed within two months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22-07-2016
Transmission Date	N.A.