

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 240 of 2011

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Shankar Ram, Son of Late Bhikhar Ram, resident of Village - Math Banwari,
Police Station - Pipra Kothi, District - East Champaran, Mothiari.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna
2. The Joint Secretary, Water Resources Department, Sinchai Bhawan, Patna
3. The Deputy Secretary, Water Resources Department, Sinchai Bhawan, Patna
4. The Finance Commissioner, Finance Department, Old Secretariat, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rupak Kumar

For the Respondents : Mr. Ajay Kr. Singh, A.C. to P.A.A.G.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 20-06-2016

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing the respondents to pay salary for the post of Chief Engineer from 07-10-2004 to 31-07-2007 with all consequential benefits.

2. The petitioner was earlier posted as Superintending Engineer in the State of Jharkhand. After bifurcation he was allotted Bihar cadre, vide Notification no. 3734 dated 04-09-2004. Earlier, he was posted as Superintending Engineer, Minor Irrigation Circle, Chaibasa. Pursuant to Notification dated 04-09-2004, the petitioner



handed over charge of post of Superintending Engineer, Minor Irrigation Circle, Chaibasa and thereafter, he submitted his joining to Joint Secretary, Water Resources Department, Bihar, Patna on 15-09-2004. The petitioner was then posted as Technical Secretary to the Chief Engineer, Water Resources Department and he was also given additional charge of the post of Chief Engineer, Water Resources Department, Birpur, vide Notification No. 5654 dated 05-10-2004, vide **Annexure - 3** to the writ petition. By the said Notification, besides the petitioner, others were also posted at different places. Subsequently, the outgoing Chief Engineer namely Sri Hari Prasad Das handed over charge of Chief Engineer to the petitioner on 07-10-2004, vide **Annexure - 4** to the writ petition. The petitioner thereafter taken over charge of Chief Engineer, Birpur, on the same date, vide **Annexure - 5** to the writ petition. It has been pleaded that subsequently, the petitioner got vigilance clearance from the department of Water Resources, State of Jharkhand, vide letter dated 12-10-2004. The petitioner's promotion as Superintending Engineer was regularized with effect from 01-12-2000, vide Memo No. 174 dated 06-09-2005 (**Annexure - 7** to the writ petition). However subsequently, in contemplation of departmental proceeding, vide Memo No. 596 dated 07-06-2006, the petitioner was put under-suspension and a departmental



proceeding was initiated, vide resolution dated 15-09-2006, on certain charges. While continuing with the departmental proceeding against the petitioner by Memo No. 1233 dated 04-12-2006 (**Annexure - 10** to the writ petition), the suspension of petitioner was revoked. After revocation of suspension, the petitioner gave joining on 05-12-2006 and finally, he superannuated with effect from 31-07-2007, while departmental proceeding was pending against him. The departmental proceeding, which was pending against the petitioner, was converted under Rule 43(b) of the Bihar Pension Rules. The said order was passed on 30-04-2008 (**Annexure - 18**).

3. The Petitioner by way of filing a writ petition, vide C.W.J.C. No. 8631 of 2009, assailed the resolution of the State Government dated 15-09-2006, whereby departmental proceeding was initiated against the petitioner and he was served with the memo of charge. The said writ petition was disposed of on 25-07-2009, vide **Annexure - 19** to the writ petition. This Court directed the petitioner to file his written defence before the Enquiry Officer within one month and thereafter, the Enquiry Officer was directed to proceed with the enquiry and conclude the same as early as possible in any case within four months from the date of filing of written defence. There was a specific direction that if the petitioner does not cooperate in the disposal of the enquiry proceeding within

the time fixed by this Court, then it shall be open to the Enquiry Officer to proceed ex parte. Liberty was granted to the petitioner to approach this Court for quashing of the charges, if the enquiry is not concluded within the time granted by the Court and lack of progress in the enquiry not attributed to the petitioner.

4. Since despite the order of this Court dated 25-07-2009 in C.W.J.C. No. 8631 of 2009, the departmental proceeding was not concluded, the petitioner again approached this Court by filing another writ petition i.e. C.W.J.C. No. 2762 of 2010, which was finally allowed on 26-08-2010. This Court quashed entire departmental proceeding against the petitioner including the memo of charges. The said order has been brought on record, as **Annexure - 20** to the writ petition. In the writ petition, it has been claimed that from 07-10-2004 till the date of his superannuation i.e. 31-07-2007, the petitioner was discharging the duty of Chief Engineer and as such, he is entitled to get salary for the post of Chief Engineer for the aforesaid period.

5. Sri Rupak Kumar, learned counsel for the petitioner submits that in view of **Annexure - 3** to the writ petition i.e. Memo no. 5654 dated 05-10-2004, the petitioner, while functioning as Superintending Engineer, was given additional charge of Chief Engineer, Birpur. Thereafter, vide **Annexure - 4**, he took the charge



of Chief Engineer after outgoing Chief Engineer Sri Hari Prasad Das, who was given cadre of Jharkhand, handed over charge of Chief Engineer to the petitioner. He submits that in view of taking over charge of Chief Engineer, the petitioner vide letter dated 07-10-2004 gave his joining as Chief Engineer, Birpur. He has argued that even at the time of suspension of the petitioner, vide Memo No. 596 dated 07-06-2006 (**Annexure - 8**), the petitioner was suspended treating him as Chief Engineer, Water Resources Department, Birpur. Even in the departmental proceeding, which was initiated vide resolution dated 15-09-2006 (**Annexure - 9**), the petitioner was treated as the then Chief Engineer, Water Resources Department, Birpur. He submits that at the time of issuance of order for revoking suspension order, vide **Annexure - 10** i.e. order contained in Memo No. 1233 dated 04-12-2006, the petitioner was treated as Chief Engineer. He submits that though the petitioner superannuated during the departmental proceeding, he superannuated as Chief Engineer and as such, he was entitled to get salary of the Chief Engineer, which was to be paid from 07-10-2004 to the date of his retirement i.e. 31-07-2007.

6. Sri Rupak Kumar, learned counsel for the petitioner has extraneously argued that once the petitioner was given charge of Chief Engineer, it was the duty of the respondents to pay the pay-



scale of the Chief Engineer. To substantiate his submission regarding claim of salary of the Chief Engineer, learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court reported in **2008 (3) P.L.J.R. 144 (Prafulla Ranjan Shrivastava -vs.- The State of Bihar & Ors.)**. He submits that once the petitioner was given charge of higher post with greater responsibilities, he was entitled to salary of the said post. He has also placed reliance on a Single Bench judgment of this Court reported in **1995 (1) P.L.J.R. 362 (Dr. Sachita Kumar Sinha -vs.- The State of Bihar & Ors.)** and **(1998) 5 Supreme Court Cases 87 (Secretary-cum-Chief Engineer, Chandigarh -vs.- Hari Om Sharma and Others)**. On aforesaid ground, it has been argued that the writ petition is required to be allowed, with direction to the respondents to pay the salary of the post of Chief Engineer from 07-10-2004 to 31-07-2007.

7. In this case, counter affidavit has been filed on behalf of respondent no. 1 to 3.

8. Sri Ajay Kumar Singh, learned A.C. to Principal Addl. Advocate General has argued that petitioner retired on 31-07-2007 from substantive post of Superintending Engineer and after lapse of several years, the petitioner has filed the present writ petition in the year 2011. He has specifically referred to averment made in the

paragraph 4(iv) and 4(v) to the counter affidavit, which is reproduced here-in-below:-

4(iv) That it is further humbly stated that the junior to the petitioner Sri Ganesh Lal Basak (I. D. 1602 Gradation of S.D.293/08) got regular promotion to the post of Chief Engineer w.e.f. 2.3.2009 vide Government order no. 230 dated 2.3.2009 which is contained in Annexure-17 of the writ application. It is evident that the Juniors to the petitioner got regular promotion to the post of Chief Engineer much after superannuation of petitioner on 31.7.2007.

(v) That it is pertinent to mention here that as far as the pay of the Chief Engineer as current/Additional charge for the period 7.10.2004 to 31.7.2007 is concerned it is manifest that according to finance department letter no. 3814 dated 21.7.1992 a sum of Rs. 250 per month is admissible to the petitioner subject to approval of finance department Govt. of Bihar. But as he was suspended from service from 7.6.2006 to 4.12.2006."

9. Learned State Counsel has argued that against the petitioner, departmental proceeding was initiated and he was put under-suspension, however; it has not been disputed that entire departmental proceeding including memo of charge was set aside by this Court in C.W.J.C. No. 2762 of 2010.

10. Besides hearing learned counsel for the parties, I have also perused the material available on record. The fact that petitioner was given additional charge of Chief Engineer with effect from 07-10-2004 is not under dispute. It is also evident that at the time of superannuation, the petitioner handed over charge as Chief



Engineer, ofcourse he was on substantive post of Superintending Engineer. The order of suspension and initiation of departmental proceeding against the petitioner depicts that the petitioner in both the orders i.e. **Annexure 8 & 9** was considered as Chief Engineer. Even revocation of suspension order i.e. order contained under Memo no. 1233 dated 04-12-2006 (**Annexure - 10**) categorically states that petitioner's suspension as Chief Engineer was revoked. Ofcourse, there is nothing on record to suggest that petitioner was given regular promotion as Chief Engineer, but fact remains that all through the petitioner was treated as Chief Engineer and retired also as Chief Engineer. Once the petitioner was given charge of Chief Engineer in addition to the charge of his original post of Superintending Engineer, the petitioner was entitled to get pay-scale of the Chief Engineer.

11. In this case, it would be necessary to reproduce paragraph - 6 of the judgment of the Apex Court reported in (1998) 5 S.C.C. 87 (Secretary-cum-Chief Engineer, Chandigarh -vs.- Hari Om Sharma and Others):-

"6. Having regard to these facts, we are of the view that the Tribunal was fully justified in ordering that the respondent shall be promoted on the basis of "quota" fixed for non-diploma-holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on

that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement."

12. Almost, identical situation was in respect of case of **Dr. Sachita Kumar Sinha** (*supra*). The Divisional Bench of this Court in **Prafulla Ranjan Shrivastava's case** (*supra*) has also considered the same point and allowed the writ petition.

13. So far as the objection, which has been raised by learned counsel for the State that belatedly the petitioner has raised the issue is concerned, the Court is of the opinion that such objection is required to be noticed only for its rejection. The petitioner while discharging the duty of Chief Engineer in addition to his post of Superintending Engineer was departmentally proceeded. He was put under-suspension. Subsequently, suspension order was revoked and he was allowed to superannuate. However, the departmental proceeding was converted under Rule 43(b) of the Bihar Pension Rules. The entire departmental proceeding, including memo of charge, was set aside by this Court on 26-08-2010 in C.W.J.C. No. 2762 of 2010. Accordingly, after the entire departmental proceeding,



which was initiated against the petitioner treating him as Chief Engineer, had come to an end in the year 2010, only thereafter, the petitioner filed the present writ petition claiming the pay-scale of Chief Engineer for the period during which he discharged the responsibility of Chief Engineer. Moreover, at this juncture, the Court is reminded with the ratio of two decisions of the Supreme Court in a case reported in **AIR 1986 SUPREME COURT 1571 (Central Inland Water Transport Corporation Ltd. and another -vs. - Brojo Nath Ganguly and another)** and **AIR 1991 SUPREME COURT 101 (Delhi Transport Corporation -vs.- D.T.C. Mazdoor Congress and others)**. In both the aforesaid cases, the Hon'ble Apex Court had held that when an employee asked by the employer to work against a post on certain terms, the employee concerned by reason of unequal bargaining position cannot object to the terms and conditions of the service. In fact, the employees are bound to accept whatever terms were offered to them.

14. In view of the aforesaid proposition, even if for the time being it is assumed that till the date of superannuation the petitioner had not raised any objection, it may not be treated as a point that the petitioner had waived his right. Moreover, in the present case, even prior to the date of his retirement, departmental proceeding was pending against him, which had finally come to an

end by a judgment of this Court in C.W.J.C. No. 2762 of 2010 on 26-08-2010, only thereafter, the petitioner approached this Court claiming pay-scale of Chief Engineer from 07-10-2004 to 31-07-2007.

15. In view of the settled proposition of law, this Court has got no option, but to allow the writ petition, with a direction to pay the pay-scale of Chief Engineer to the petitioner from 07-10-2004 to 31-07-2007 after deducting the salary, which was already paid to the petitioner. The respondents are directed to grant all consequential benefits.

16. Accordingly, the writ petition is allowed with direction to grant all consequential benefit to the petitioner.

17. All the formalities are required to be completed within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	02-05-2016
Uploading Date	20-06-2016
Transmission Date	N/A