

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1475 of 2010

IN

Civil Writ Jurisdiction Case No 3913 of 2002

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Ram Swaroop Prasad S/O Late Banshi Prasad At And P.O.- Sugaon, P.S.-
Makhdumpur, Distt.- Jehanabad, Presently Residing In Mohalla- East Ashok Nagar,
Road No. 14A, Kankarbagh, Lohiya Nagar, Patna-800020

.... Appellant/s

Versus

1. The State Of Bihar through the Commissioner cum Secretary to Government
Water Resources Department, Sinchai Bhawan, Patna
2. Special Secretary to Government Water Resources Department, Sinchai Bhawan,
Patna
3. Engineer-In-Chief Water Resources Department, Sinchai Bhawan, Patna
4. Joint Secretary to Government Water Resources Department, Sinchai Bhawan,
Patna
5. Under Secretary To Government Water Resources Department, Sinchai Bhawan,
Patna
6. Accountant General (A & E-II), Birchand Patel Marg, Patna

.... Respondent/s

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For the Appellant/s : Mr Girish Nandan Pd Singh, Advocate

For the S t a t e : Mr R B K Pandey, SC 29

For the AG : Ms Nivedita Nirvikar, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

&

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-04-2016

The present intra-Court appeal is against the judgment and
order dated 29.07.2009 passed by learned Single Judge of this Court
in CWJC No 3913 of 2002.

2 The writ petitioner-appellant superannuated on 31st
January, 1997 as Executive Engineer, Water Resources Department,

Government of Bihar. While he was in service, allegedly an inspection was conducted by the Flying Squad in relation to certain works which was under his charge and some discrepancies were pointed out. In respect of this, a departmental proceeding was initiated while he was still in service. This was the first charge as against him. The second charge was that inspite of the fact that he knew his date of retirement, he continued to work for another four months. This was the second charge.

3 The writ petitioner-appellant took various defences. So far as first charge is concerned, he stated that the Flying Squad inspected and drew up the report behind his back and he was never given a chance to explain the alleged discrepancies. The report, having been prepared behind his back and ex parte, could not be relied upon. To the second charge, his defence was that, being a Gazetted Officer, everyone was aware of his date of superannuation. The Chief Engineer had specifically asked him to continue because of shortage of hands. He had continued accordingly but he never took or demanded even a single paisa for this overstayal period. He was never paid anything for this period. In the first departmental proceeding, he was found guilty and 15% of pensionary benefits were to be deducted. Effectively, his pension was reduced by 15% for his entire life. In the second disciplinary proceeding, he was also found

guilty and 20% of pensionary benefits were held to be forfeited. The cumulative effect was that the writ petitioner-appellant, who had otherwise unblemished career, was visited with 35% forfeiture of his pensionary benefits, for life.

4 Having exhausted statutory remedies, he filed the writ petition. The learned Single Judge, having examined the procedure followed in both proceedings, being satisfied that the procedure was not in accordance with law, set aside the orders, but while doing so, he has remanded the matter for conducting the proceedings afresh. It is virtually this part the petitioner has appealed against.

5 We have heard the learned counsel for the writ petitioner-appellant and learned counsel for the State.

6 Learned counsel for the writ petitioner-appellant submits that the writ petitioner-appellant, by now, is approaching 80 years of age and now, to expect him to face the departmental proceedings, would be only impossibility. The departmental proceedings were initiated over two decades back and if the authorities could not conduct the same in a lawful manner, they should not be given a second inning in the matter keeping in view the age of the writ petitioner-appellant. It is further submitted that even otherwise, the punishment of forfeiture of pensionary benefits of 35% for life is too extreme a punishment.

7 We have heard the parties and considered the matter.

8 In the peculiar facts and circumstances, as noted above, though we have no doubt, that what the learned Single Judge did, was normally correct but considering the fact that the writ petitioner-appellant would be nearing 80 years of age and at this sunset time, to expect him to fight another battle, would be travesty of justice. He was not at fault.

9 We, therefore, taking a logistic view of the matter, hold and direct that the order of the learned Single Judge, inasmuch as it remands the matter for reinitiating the departmental proceedings, is set aside but that would not mean that the writ petitioner-appellant is exonerated. The order of the learned Single Judge is dated 29.07.2009. In the peculiar facts and circumstances noted above, we deem it proper that the deductions in the retiral dues, as made, would stand upto the date of the order of the learned Single Judge that is 29.07.2009 whereafter the writ petitioner-appellant would be entitled to full pension. In other words, we have restricted the penalty and the punishment of forfeiture of 35% of his pensionary benefits to a period of about 12 years of his retirement.

10 With this modification in the order of the learned Single Judge, we dispose of this appeal.

11 Needless to say that keeping in view the advanced age of

the writ petitioner-appellant, State should make all endeavours to clear the dues of the writ petitioner-appellant within a period of three months from today.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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