

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.869 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 14067 of 2008
Along with
Interlocutory Application No.3335 of 2016

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1. The State of Bihar.
 2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
 3. The Engineer-in-Chief cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
 4. The Deputy Secretary cum Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna.
 5. The Chief Engineer (C), South Bihar Wing, Road Construction Department, Vishwaswaraiya Bhawan, Patna.
 6. The Superintending Engineer-cum- Conducting Officer, Designee and Quality Control, Circle No.2, Road Construction Department, Vishwaswaraiya Bhawan, Patna.

.... Respondents-Appellant/s

Versus

1. Nagendra Prasad Sharma, son of late Raghunandan Hazari, resident of Village – Tetari, P S – Balia, P O – Tetari, District – Begusarai, at present residing at Mohalla – Chanakyanagar, P.S. Begusarai, P O – Begusarai, District - Begusarai.

... Petitioner-Respondent 1st Set.

2. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna.
3. The Accountant General, Bihar, Patna.

.. .. Respondents/ Respondent 2nd Set.

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Appearance :

For the Appellants : Mr. P. K. Verma, Advocate
Ms. Divya Verma, Advocate

For the Respondent No.1 : Mr. Nagendra Prasad Sharma, (in person)

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

Date: 17-11-2016

Re.: Interlocutory Application No.3335 of 2016

The application is for condonation of delay of 205 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.869 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by a learned Single Bench of this Court on 7th May, 2015 whereby, punishment of withholding of 10% pension of the writ applicant for five years and then 5% pension for additional five years was set aside.

The writ applicant, respondent no.1 herein, was charge sheeted on 16th of December, 2003 on two grounds. The first charge was that a sum of Rs.32 lacks was allocated for development of Mau Kurkut Bigha Kaiya Tar Devra Road. Out of the said amount, Rs.15 lacks were surrendered and, thus, Rs.17 lacks were available for



expenditure, but a sum of Rs. 22,99,375/- was spent, thus, there is over expenditure around Rs.6 lacs. The second charge was that Rs.59 lacs were allocated for the development of Dadreji Aanti Rafiganj Road and out of the said amount, Rs.24 lacs were surrendered. Thus, Rs.35 lacs were available for carrying out the works, but he had surrendered a sum of Rs.28,105/-. Such charges were said to be proved by the enquiry officer and after serving show cause notice, the punishment, as mentioned above, was imposed upon the writ applicant.

The learned Single Bench has returned a finding that in terms of Rule 43(b) of the Bihar Pension Rules, punishment can be imposed upon a retired official only on proof of grave misconduct or when he has caused pecuniary loss to Government by misconduct or negligence. The finding of the learned Single Judge is that there is no allegation of grave misconduct which may entitle the State Government to pass an order of withholding of pension after attaining the age of superannuation.

There is no allegation of misappropriation of any fund. The allegation is of overspending or less spending of some amount over and above the sanctioned budget. Such overspending or less spending cannot be said to be a grave misconduct, but only a case of lack of approval from the competent authority. Such lack of an approval from the competent authority should not lead to withholding of pension and

that too for a period of 10 years.

We do not find any merit in the present Letters Patent Appeal. The same is, thus, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

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CAV DATE	N. A.
Uploading Date	22.11.2016
Transmission Date	