

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12989 of 2015

Om Prakash Choubey, son of Late Kamakhya Choubey, resident of Sonbarsa, P.O-
Harsidhi, District East Champaran

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj
2. The Director, Department of Panchayati Raj, Government of Bihar, Patna
3. The District Magistrate, East Champaran, Motihari
4. The District Panchayati Raj Officer, East Champaran, Motihari

.... Respondents

Appearance :

For the Petitioner/s : Mr. Umakant Shukla, Advocate
: Mr. Shakti Suman Kumar, Advocate
For the Respondent/s : Mr. P. K. Verma, Sr. Advocate (AAG-5)
: Dr. Mankeshwar Tiwari, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 05-01-2016

Heard learned counsel for the petitioner and the respondents.

The petitioner was posted as Panchayat Secretary, Talimpur Panchayat, Block Madhuban of East Champaran district in the year 2003. He was departmentally proceeded for defalcation of Government money by making interpolation in the cheque. Two cases, namely, Madhuban P.S. case no. 65 of 2003 under Sections 409, 420 and 120B of the Indian Penal Code and Madhuban P.S. case no. 66 of 2003 under the same Sections were registered. For some reason or the other, the departmental proceeding lingered. In the meantime, the petitioner superannuated on 30.06.2014. The

proceeding was converted into one under Section 43 (b) of the Bihar Pension Rules. Ultimately, he was inflicted punishment of withholding of 100% pension and recovery of Rs. 3,39,000/-.

The petitioner submits that he had not even received his leave encashment and gratuity amount. There is some dispute whether the report of the proceeding under Section 43 (b) of the Bihar Pension Rules was served upon the petitioner or not.

The case of the State in para 23 of the counter affidavit is that copy of the enquiry report was served upon the petitioner.

The petitioner counters the statement by stating that the statement made in para 23 of the counter affidavit is vague and the respondents would be put to strict proof of the same. On this basis, he submits that order withholding 100% pension has been passed in violation of the principles of natural justice, as he did not have occasion to submit his response to the findings recorded in the proceeding under 43 (b) of the Bihar Pension Rules. He further submits that as the criminal case is pending, the respondents ought to have not inflicted such a harsh punishment.

Mr. P.K. Verma, learned Additional Advocate General no.5, submits that the petitioner has an alternative remedy of appeal under Rule 24 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

In view of the above, the writ application is disposed of with liberty to the petitioner to take remedy of appeal available under law. In case, if such appeal is filed, the delay in filing the appeal would be sympathetically condoned, as the petitioner was pursuing his remedy before this Court.

(Samarendra Pratap Singh, J.)

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