

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8981 of 2014

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Upendra Prasad Singh Son of Late Chandeshwar Prasad Singh Resident of Village
- Khushalpur, P.S. Telhara, District - Nalanda at present residing near Parmar
Coaching Centre Chitragupt Nagar, Munnachak, P.S. Patrakar Nagar, District -
Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Minor Water Resources Deptt. (Tubewell Wing) (Minor irrigation),
Govt. of Bihar, Patna New Secretariat, Patna
3. Chief Engineer South, Tubewell Wing, minor Water resources Deptt. Shekhpura,
Patna - 14
4. Superintending Engineer, Tubewell Circle, Gaya
5. Executive Engineer, Tubewell Pramandal (Minor irrigation Deptt.), Gaya
6. Finance Commissioner, Finance Department, Government of Bihar, Old
Secretariat, Patna
7. Accountant General, Bihar at Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Binoy Kumar, Advocate
For the State : Mr. H. S. Sundaran, AC to SC 10
For the Respondent no. 7 : Mr. Dhnanjay Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 03-03-2016

Heard learned counsel for the parties.

It appears that all admitted dues of the petitioner have been paid. However, learned counsel for the petitioner submits that there was delay of six years in payment and the petitioner is entitled to interest in view of the decision of the Hon'ble Supreme Court in the Case of **S. K. Dua v. State of Haryana** reported in **2008 (2) PLJR (SC) 128**. Learned counsel further submits that he has not been given the benefit of 3rd ACP.

Learned counsel for the State submits that the petitioner, at the relevant time, being an Accounts Clerk was performing the duties of Divisional Cashier and it was later discovered that the cheques were prepared in the name of persons whose bills were not cleared by the Treasury whereas persons, whose bills were cleared, were not paid and thus the petitioner has committed irregularity. It is further submitted that the petitioner had been granted the benefit of 1st and 2nd ACP, but it was detected that the same were made erroneously and the petitioner was not entitled to the benefit of ACP as he had not passed the departmental examination, which is the basic criteria for awarding ACP and thus, grant of 3rd ACP is not permissible. Learned counsel submits that the facts of the case do not justify payment of any interest as the

petitioner himself has moved the Court after five years and within one year he has been paid and further on facts there is no denial that he was not the custodian of the cheque books which were put up before the Competent Authority for making payment to persons whose bills were not cleared by the Treasury.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner has not claimed anything beyond the statutory interest and now seeking interest on the payment is beyond the pleadings. Moreover, the fact of the present case is that the conduct of the petitioner himself was being looked into that he had put up the cheques for signing before the Competent Authority in a manner which was irregular as the cheques in favour of the persons whose bills were not cleared by the Treasury were prepared whereas the persons whose bills were cleared were not given cheques resulting in the amount being exhausted and the persons entitled having to wait for a later time for getting their admitted payment.

The Court finds substance in the submissions of learned counsel for the State that the requirement of ACP stipulates that the petitioner has to be otherwise qualified for promotion which could not be given only because of there not being any post. In the present case, the petitioner not having cleared the departmental examination

was not entitled for any ACP. In fact, the Court finds that the State has shown grace to the petitioner by granting him two ACPs and not cancelling the same upon detection of the error.

The decision of the Hon’ble Supreme Court in the case of **S. K. Dua** (*supra*) is clearly distinguishable since the petitioner of the said writ petition had been cleared in the departmental proceedings and exonerated of the charges and thereafter the retiral benefits was paid to him. However, in the present case, there being no relief sought with regard to payment of interest other than the statutory and the case of the petitioner not being that even statutory interest has been withheld, the Court does not find any ground to issue any mandamus in the matter.

Accordingly, the petitioner having been paid all his retiral benefits, the writ petition stands disposed off.

(Ahsanuddin Amanullah, J)

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