

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.36 of 2015

IN

Civil Writ Jurisdiction Case No. 17006 of 2008

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1. The State of Bihar
2. The Secretary-Cum-Commissioner, Irrigation Department, Government of Bihar, Patna
3. The Secretary-Cum-Commissioner, Minor Irrigation Department, Government of Bihar, Patna
4. The Additional Secretary, Irrigation Department, Government of Bihar, Patna
5. The Treasury Officer, Patna Collectorate, Patna, Bihar

.... Appellants

Versus

1. Vinay Mohan Son of Late Hareshwari Prasad, resident of Mohalla-Adarsh Vihar, Rukanpura, P.S.- Rupaspur, District- Patna
2. The Bihar Public Service Commissioner, Bailey Road, Patna, Bihar
3. The Accountant General, Bihar, Birchand Patel Path, Bihar, Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate, AAG-IV
Mr. Sanjay Prasad, AC to AAG-IV
For the BPSC : Mr. Rajni Kant Jha, Advocate
Mr. Niraj Kumar, Advocate
For the Respondent no.1 : Mr. Bindhyachal Singh, Advocate
Mr. Sanjay Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 17-05-2017

Heard learned counsel for the parties.

Shorn of all other details, the State is aggrieved by the fact that their decision to withhold 100% pension, as a matter of punishment because of irregularity in performance of certain earth-work amounting to Rs. 36,000/- was quashed by the learned Single Judge. The



learned Single Judge found one too many omissions in the manner in which the whole enquiry, if at all it was one, was done in the eye of law.

The submission of learned Additional Advocate General is that the authorities had to proceed *ex parte* because the private respondent did not cooperate despite newspaper publication and notice. Since the issue related to misuse of power and position by the private respondent which had caused loss to the exchequer, the State authorities were within their right to impose punishment or withhold 100% pension and gratuity.

If the allegation of learned Additional Advocate General about non-cooperation before the State respondent is taken on the face value but even then it does not absolve the State authorities from conducting a proceeding in accordance with the Bihar Civil Services Conduct Rules, 2005 as amended up to date. To that extent, the learned Single Judge was correct in quashing the impugned order dated 05.08.2008.

But, it is also a fact that the hands of the authorities were forced to proceed *ex parte* and for that the private respondent cannot be given benefit of doubt or the privilege, merely because, he has superannuated. This court, to that extent, is in agreement with the learned



Additional Advocate General that at least a liberty should have been given to the State authorities to rectify the omissions which was pointed out or noticed by the learned Single Judge by remanding the matter. But that remand in the opinion of the Court can not be with the object of reopening of the enquiry now as the private respondent has already superannuated on 31.01.2008.

However, the facts being what they are, the court does find one thing irrational and arbitrary that for the so-called non-accounting of Rs. 36,000/-, 100% withholding of pension as well as gratuity of the private respondent is shocking to the conscience and, therefore, hit by the principles of proportionality.

The Court, therefore, modifies the order of learned Single Judge to the extent by relegating the punishment question to the disciplinary authority for reconsideration on the quantum of punishment which should be proportionate to the allegation and the amount for which the private respondent was called upon to answer. The disciplinary authority, therefore, will pass a fresh order keeping the above principles in mind preferably within a period of three months. Since it is an old matter, it must reach its finality soon.

Accordingly, this appeal is allowed to the



extent indicated above.

If no decision or order is passed within the time frame fixed by this Court the order of learned Single Judge will prevail.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

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