IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14271 of 2016

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Awadhesh Mishra son of Kameshwar Mishra, resident of Sursand West No. 06, P.S.- Sursand, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Circle Officer, Sursand, Sitamarhi.
6. The Officer-in-Charge, Sursand Police Station, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

For the Respondent/s : Mr. Sumant Kumar Jha, A.C. to A.A.G.-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-04-2017

Heard Mr. Krishna Kant Singh, learned counsel for the petitioner and Mr. Sumant Kumar Jha, learned A.C. to A.A.G.-3 appearing on behalf of the State.

2. The case of the petitioner as narrated in the present application is that while being posted as Dafadar under the Sursand Police Station he was suspended on 15.05.2004 by the District Magistrate, Sitamarhi on the charge of disobedience to the order

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passed by the superior officer. Subsequently, a departmental proceeding was initiated against him. During the pendency of the proceeding the suspension of the petitioner was revoked vide order dated 21.06.2005 passed by the District Magistrate, Sitamarhi with observation that the decision in respect of balance payment of suspension period would be taken after disposal of departmental proceeding. Thereafter, the enquiry officer submitted his report on 29.08.2005. From perusal of the inquiry report it would be evident that three witnesses, namely, Abdul Mannan, Rajeshwar Raut and Laxman Prasad were examined in course of inquiry. On the basis of the available materials, the enquiry officer came to a conclusion that the charge levelled against the petitioner was not proved. Since then, the disciplinary authority has not passed the final order in the disciplinary proceeding despite the fact that the petitioner submitted several representations for closing the disciplinary proceeding initiated against him. Ultimately, the petitioner retired from service on 30th September, 2015.

3. As the petitioner was not being paid his retiral benefits, he approached this Court by filing the present writ application in which the prayer has been made to direct the respondents to pay all his post retiral dues.

4. A counter affidavit has been filed on behalf of

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respondent no.4, the Superintendent of Police, Sitamarhi in which the statements made in the writ application have not been denied.

5. Subsequently, the Circle Officer, Sursand, Sitamarhi (respondent no.5) has filed a counter affidavit in which a plea has been taken that since the petitioner has not submitted his pension papers and application for final withdrawal of the amount deposited in the general provident fund, his pensionary benefits could not be released. It is further stated that since the disciplinary proceeding initiated against the petitioner could not be completed during his service tenure, a final decision in respect of payment of balance salary of the petitioner for the suspension period i.e., from 15.05.2004 to 21.06.2005 would be taken after the disposal of the pending proceeding.

6. Learned counsel for the petitioner submitted that the stand of the Circle Officer, Sursand, Sitamarhi in his counter affidavit is not correct. He submitted that though all the requisites pension papers for payment of post retiral dues was earlier filed in order to avoid any controversy, the petitioner would once again approach the respondent, Circle officer, Sursand Sitamarhi and file due pension papers. He further contended that the three witnesses examined in course of inquiry did not support the charge levelled against the petitioner. He contended that since there was no material against the

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petitioner, the enquiry officer was left with no other option, but to hold that the charge levelled against him could not be proved. He contended that withholdment of payment of retiral dues on the ground of pending departmental proceeding in which the enquiry officer has recommended for exonerating the petitioner from the charge way back in the year 2005 is wholly illegal, arbitrary and unjust.

7. *Per contra,* learned counsel for the State submitted that it is true that the enquiry officer had recommended for exonerating the petitioner from the charge in the year 2005, but the Superintendent of Police, Sitamarhi had shown his disagreement with the recommendation of the conducting officer vide letter dated 14.06.2016 and had also opined that to save the petitioner, the conducting officer had recommended to exonerate the petitioner from the alleged charge in the departmental proceeding. He contended that in view of the subsequent disagreement of the Superintendent of Police, Sitamarhi with the recommendation of the conducting officer, the respondents want three months further time in order to conclude the departmental proceeding against the petitioner and only thereafter a decision would be taken for payment of full salary of the petitioner for the suspension period.

8. I have heard rival contentions advanced on behalf of the parties and carefully perused the record.

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9. On query made by the Court, learned counsel for the State submitted that in case of Dafadar the disciplinary authority is the District Magistrate. In the present case, admittedly, the enquiry was conducted by the Circle Officer, Sursand, Sitamarhi (respondent no.4). In that view of the matter, if the enquiry officer was the Circle Officer, Sursand, Sitamarhi and the disciplinary authority was the District Magistrate, Sitamarhi, I fail to understand as to how the Superintendent of Police, Sitamarhi would have any occasion to disagree with the findings of the enquiry officer. There are set principles for holding a disciplinary proceeding. The report of the enquiry officer is always submitted to the disciplinary authority and not to any other officer and it is for the disciplinary authority to pass necessary orders after issuance of second show cause notice to the delinquent employee. Apparently, a poor Dafadar is being harassed by the respondents for no fault on his part. The enquiry officer had submitted his report more than a decade back and since then the disciplinary authority is sitting tight over the matter. To top it all, at this belated stage, when a poor employee has retired, he has not been paid his pensionary benefits in the name of pending disciplinary proceeding as also due to the fact that he has not submitted his pension papers and due application form for withdrawal of general provident fund amount

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10. Considering the totality of the facts and circumstances of the case, I dispose of the present writ application with the following directions:-

(a) The disciplinary proceeding initiated against the petitioner for the alleged charge of disobedience to the order passed by the then officer incahrge on 14.03.2004 is hereby quashed.

(b) The petitioner is directed to submit his pension papers and application form for withdrawal of amount deposited in the general provident fund within two weeks from today.

(c) The respondent nos. 3 to 6 are directed to pay all the pending retiral benefits of the petitioner within eight weeks from the date of receipt of pension papers and application form for final withdrawal of the general provident fund amount.

(d) The respondents shall pay balance salary of the petitioner for the period of suspension i.e., from 15.05.2004 to 21.06.2005.

(e) In case the aforesaid payments are not made within the stipulated period hereinabove, the petitioner would also be entitled to receive interest over the amount due at the rate of eight per cent per annum from the date it became due till the

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date of its actual payment.

11. The parties shall bear their own costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2017
Transmission Date	

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