

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1111 of 2015

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Nayer Ahsan aged about 64 years, Son of Late Monir Ahsan, Resident of Road No. 8, Rajendra Nagar, Police Station - Kadamkuan, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna.
2. The Principal Secretary, Finance Department, Bihar, Old Secretariat, Patna.
3. The Joint Secretary, Water Resources Department, Bihar, Sinchai Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar

For the Respondent/s : AC to GP – 4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-02-2017

Heard Sri Rupak Kumar, learned counsel for the petitioner and learned AC to GP No. 4.

The petitioner, has approached this Court under Article 226 of the Constitution of India, with a prayer to direct the respondents to consider his claim for grant of 1st A.C.P. with effect from 9.8.1999 and 2nd A.C.P. with effect from 7.2.2003.

It has been pleaded that petitioner was initially appointed as Junior Engineer. Subsequently, the said post was converted as Assistant Engineer and services were regularized from the date of assuming charge as Assistant Engineer in the Minor Irrigation Department and finally he superannuated with effect from 31.1.2010



as Assistant Engineer from the office of Executive Engineer, Minor Irrigation Division Mithapur, Patna. Since the petitioner was not granted any benefit under the scheme of A.C.P. the petitioner filed representations before the Principal Secretary, Water Resources Department however no decision on his representation was taken. Thereafter the petitioner filed the present writ petition. After filing of the writ petition the petitioner filed an interlocutory application vide I.A. No. 4453 of 2015 with a prayer to allow him to amend the prayer portion in the writ petition to the extent of quashing of the proceedings of departmental screening committee dated 10.11.2014 whereby his claim for grant of 1st and 2nd A.C.P. was rejected on the plea of currency / impact of penalty issued vide Order No. 140 dated 30.6.2005. The said interlocutory application vide order dated 2.2.2017 was directed to be treated as part of the writ petition. It was submitted by learned counsel for the petitioner that it is true that earlier petitioner was put under suspension. In the year 2000 a departmental proceeding was initiated. Finally in the departmental proceeding the petitioner was held guilty and punishment order was issued vide order contained in Memo No. 2544 dated 30.6.2005. Besides other punishments five increments with cumulative effect was directed to be stopped and for further five years he was restrained from functioning in the work division. Before expiry of the said five



years the petitioner superannuated with effect from 31st January 2010. It has been argued by learned counsel for the petitioner that it is true that in view of punishment order the petitioner is not entitled to claim for 2nd A.C.P. but the claim for 1st A.C.P. had accrued in the year 1999 on which date there was no allegation nor any proceeding pending against the petitioner and as such at least petitioner was entitled to be given the benefit of 1st A.C.P. However the petitioner has been denied the same.

Learned AC to GP No. 4 appearing on behalf of the State by way of referring to the counter affidavit has argued that the petitioner superannuated during the continuance of punishment period and as such the screening committee has rightly turned down the claim of the petitioner. According to learned State Counsel there is no reason to pass any favourable order.

Besides hearing learned counsel for the parties I have perused the materials available on record. After going through the material on record it is evident that the petitioner when was entitled for the benefit of 1st A.C.P. there was no allegation or proceeding pending against the petitioner nor any such statement has been made in the counter affidavit. Meaning thereby that on the date of claim for grant of benefit under the 1st A.C.P. with effect from the year 1999 there was nothing pending against him and as such there was no



reason to deny the benefit of 1st A.C.P . So far 2nd A.C.P. is concerned certainly in view of the fact that on the date when the petitioner’s right had accrued he was already under suspension and departmental proceeding was pending. The said proceeding ended with punishment and as such he was not entitled to get benefit of 2nd A.C.P. Accordingly, the writ petition stands partly allowed with direction to the respondent no. 1 to consider the claim of the petitioner for grant of 1st A.C.P. in view of observations made hereinabove and pass appropriate suitable order preferably within a period of three months from the date of receipt / production of a copy of this order. The petitioner shall be entitled to all consequential benefits.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-02-2017
Transmission Date	NA

