

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10139 of 2005

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1. Madan Mohan Lal Son Of Late Rajendra Lal Resident Of Village - Sultanpur,
Police Station - Sonapura Via Kasap, Police Station - Jagdishpur, District – Bhojpur
now retired

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Department of Minor Irrigation, Vikash Bhawan Bihar, Patna
2. The Deputy Secretary to Government, Minor Irrigation Department, Vikash Bhawan, Bihar, Patna
3. Under Secretary to the Government Minor Irrigation Department, Vikash Bhawan, Bihar, Patna
4. The Chief Engineer, Minor Irrigation Department, Vikash Bhawan, Bihar, Patna
5. The Superintendeing Engineer, Minor Irrigation Circle, Mithapur Farm, Patna P.s. Jakkanpur, District Patna
6. The Executive Engineer, Minor Irrigation Ara, P.S. Ara, Town and District Bhojpur
7. Executive Engineer, Minor Irrigation Division, Nawada District Nawada
8. Deputy Director, Ground Water Investigation Division, Tilka Manjhi Bhagalpur, District Bhagalpur
9. The Superintending Engineer-cum-Conducting Offices, Minor Irrigation Circle Mithapur, Farm, Patna, District Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 20386 of 2013

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1. Madan Mohan Lal Son Of Late Rajendra Lal Resident Of Village - Sultanpur,
Police Station - Sonapura Via Kasap, Police Station - Jagdishpur, District - Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Minor Irrigation, Vikash Bhawan, Bihar, Patna
3. The Chief Engineer, Minor Irrigation Department, Vikash Bhawan, Bihar, Patna
4. The Superintending Engineer, Minor Irrigation Circle, Mithapur Form, Patna, P.S. Jakkanpur, District - Patna
5. The Executive Engineer, Minor Irrigation Ara, P.S. Ara Town, District - Bhojpur
6. The Deputy Director, Ground Water Bhagalpur Division, Minor Irrigation Department, Tilka Manjhi Chowk, Bhagalpur
7. The Accountant General, Bihar, R.Block, Patna

.... Respondent/s

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Appearance :



(In CWJC No.10139 of 2005)

For the Petitioner/s : Mr. Akhileshwar Kumar Srivastava
For the State : Mr. Sanjay Prasad, AC to AAG 4
For Accountant General : Mr. Ranjan Kumar

(In CWJC No.20386 of 2013)

For the Petitioner/s : Mr. Akhileshwar Kumar Srivastava
For the State : Mr. Sanjay Prasad, AC to AAG 4
For Accountant General : Mr. Ranjan Kumar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 11-05-2018

Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the Accountant General.

C.W.J.C. No.10139 of 2005

In the present case, the petitioner is challenging the order of punishment dated 7.12.2004 by which in exercise of power under Section 43(b) of the Bihar Pension Rules stoppage of 100% pension and gratuity, recovery of Rs.1,89,000/- from personal property of the petitioner, no payment for suspension period for the period between 12.8.1988 to 20.10.1997, except subsistence allowances would be made to the petitioner.

The petitioner was posted as Accounts Clerk in the office of Sub Divisional Officer, Minor Irrigation Department during the period 1988. As per petitioner, Ajit Vikram, Sub Divisional Officer, Minor Irrigation Department took advance of Rs. 5,12,000/- in between 22.3.1988 to 31.3.1988 which is/was



reflected from the hand receipt bearing his signature and of Treasury Guard. Executive Engineer vide letter dated 9.5.1988 has called a meeting on 11.5.1988 calling all the Cashier as well as Junior Engineer to participate in the said meeting. The petitioner had gone there but the Executive Engineer was found absent. Ajit Vikram, Sub Divisional Officer forcefully got advance money recorded in the Account Register and also obtained hand receipt of petitioner of taking advance Rs.75000/-. This incident was informed by the petitioner to the Executive Engineer, Superintending Engineer and others (Annexure 5), inasmuch as the petitioner has also filed a Sanha as well as a criminal case vide Complaint case no. 178 of 1988 on 11.7.1988 but he does not know the outcome of criminal case lodged by him. At the same time, Ajit Vikram, Sub Divisional Officer, Minor Irrigation Department has also lodged a criminal case vide Prio Case No. 115/1988 against the petitioner on 16.7.2008 wherein statement has been made that Rs.75,000/- was given to the petitioner to hand over to another Sub Divisional Officer but the petitioner had misappropriated the same. Further allegation has been made that the petitioner has received 120 tonnes of wheat which was meant for distribution but out of that 50 tonnes was distributed and 70 tonnes remained with the present petitioner and



thereby misappropriated the same, in altogether the petitioner misappropriated Rs.1,89,000/-.

From the second show cause notice dated 17.9.2004 (Annexure 16) in which it has been mentioned the enquiry report vide memo no.812 dated 29.7.2005 submitted by the Superintending Engineer has found charges proved against him is part of the second show-cause itself disclosed that in fact no enquiry was conducted rather perfunctory enquiry was conducted by him which has no semblance of enquiry was done against the petitioner.

From the record it does not appear that the petitioner was ever given a notice for participation in the enquiry. It also appears that for conducting the enquiry no formal order was passed for appointment of Presenting Officer as well as Enquiry Officer but merely eye-wash of the enquiry was conducted and report has been submitted against the petitioner. No oral witness has been examined proving charges against the petitioner as allegation has been made by Ajit Vikram had handed over Rs.75,000/- did not come forward to support the case nor any person was examined to depose that 70 tonnes of wheat was misappropriated by the petitioner. Further said that the petitioner was not served enquiry report. Though counter affidavit has been filed by the State but



there is no denial of the same. So right of hearing from the beginning enquiry was not extended to the petitioner before the order was passed against him under Section 43(b) of the Bihar Pension Rules can not be said that the order was passed after observance of fair and proper enquiry. Any order de hors to the provision of Section 43(b) of the Bihar Pension Rule is not sustainable in the eye of law and it is completely illegal and cannot be affirmed in the touch stone under Section 43(b) of the Bihar Pension Rules.

Accordingly the order of punishment dated 7.12.2004 is set aside and the matter is remanded back, if so advised, the Government may so like may initiate a fresh proceeding and decide the same in accordance with law. The enquiry would be initiated from the stage of issuance of memo of charge.

With the aforesaid observation and direction this writ petition is allowed.

C.W.J.C. No. 20386 of 2013

Any retrial benefit will be subject to the result of the departmental proceeding except that this Court has set aside the order of punishment, the Government will release the pension and gratuity up-to 50%. The payment will be made within a period of two months from the date of receipt/production of a copy of this



order.

Accordingly this writ petition is disposed of with the
aforesaid observation and direction.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	8.6.2018
Transmission Date	NA

