

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17174 of 2010

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Chandra Bhushan Choudhary S/O Late Ram Bahadur Choudhary R/O Vill.
And P.S.- Khirhar, Distt.- Madhubani, Presently Posted As Junior Engineer,
Building Circle, Darbhanga, Building Construction Division, Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Engineer-In-Chief Building Construction Department, Bihar,
Vishweswaraiya Bhawan, Bailey Road, Patna
3. The Principal Secretary Cum Building Commissioner Building Construction
Department, Bihar, Patna-1
4. The Chief Engineer, North Bihar Wing Building Construction Department,
Patna-1
5. The Superintending Engineer Building Construction Department, Building
Circle, Darbhanga
6. The Executive Engineer Building Construction Department, Construction
Division, Darbhanga
7. The Executive Engineer, Building Division, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma Advocate Mr. Shiv Kumar Advocate Mr. Sahjanand Sharma Advocate
For the Respondent/s	:	Mr. Amit Bhushan AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

7 07-12-2018 Mr. Banwari Sharma, learned advocate for the

petitioner has filed a supplementary affidavit during the

course of the arguments.

Let it be taken on record.

The petitioner initially had prayed for a direction

for being paid his salary for the period 01.03.2006 to



24.05.2007, which has been withheld arbitrarily. But, later, by way of an Interlocutory Application, he has made an additional prayer for payment of salary for the period 01.02.2011 to 02.09.2011.

It appears that earlier the petitioner had approached this Court for payment of his salary since February, 2002 till June, 2003, which was withheld on the ground that he had not discharged his duty and had not accounted for the temporary advance of some amount.

A Bench of this Court in C.W.J.C. No. 4410 of 2005, after going through all the materials in detail, directed such salary to be paid to the petitioner. Thereafter, the petitioner again felt aggrieved by the fact that he was not paid his salary for the period 01.03.2006 to 24.05.2007.

This led to the filing of another writ petition vide C.W.J.C. No. 10289 of 2009, wherein a Bench of this Court vide order dated 24.08.2009 directed the Chief Engineer, North Bihar Building Construction Department to consider the representation of the petitioner dated 25.06.2009 and ensure payment of the subsistence allowance as per the



Rules and pass appropriate order in accordance with law within the stipulated period.

When the aforesaid order was not complied with, one contempt petition was filed by the petitioner which was rejected, as the petitioner continued to remain under suspension and the Court was of the view that any payment should await the result of the departmental proceeding.

In the present writ petition, the petitioner has challenged the order passed by the Engineer-in-Chief, Building Construction Department (Respondent No. 2), whereby the claim of the petitioner has been rejected.

The order impugned indicates that on notice, the petitioner physically appeared before the Respondent No. 2 but did not offer any evidence in support of his claim that he had worked for the aforesaid period, for which he had not paid his salary.

The Respondent No. 2, thereafter, gave him another time for submitting evidence in support of his claim. But, the petitioner did not offer any evidence nor submitted any written reply. The claim of the petitioner, therefore, was



rejected.

The counter affidavit filed on behalf of the Respondent No. 7 (Executive Engineer, Building Division, Samastipur) reflects that the petitioner is not an employee of the Building Construction Department as he was relieved from the aforesaid Department because of his being a habitual absentee and presently his services are under the Road Construction Department.

It has, therefore, been submitted that the present writ petition is misconceived, in as much as it suffers from the vice of non-joinder/misjoinder of parties.

It has further been indicated in the counter affidavit that in view of the order passed by this Court way back in the year 2005, the petitioner has been paid Rs. 4,36,800/- towards salary for the period 01.07.2003 to 31.01.2006. Thereafter, his salary was withheld for the period that he did not report on duty.

By way of an Interlocutory Application, it has been urged on behalf of the Respondent No. 7 that the petitioner is trying to explain the delay and adding a new prayer in the



writ petition, which ought not to be allowed.

The aforesaid petition is not tenable for the reason that the prayer made in the Interlocutory Application has already been allowed by the order dated 20.11.2018 passed by this Court.

Mr. Banwari Sharma, learned advocate for the petitioner submits that for a genuine reason, he could not offer any evidence in support of his claim that he had worked for the period for which he has not been paid his salary. He has submitted that because of the illness of his father, who has been suffering from Cancer disease, he could not offer evidence in support of his claim.

He, however, submits that an opportunity be given to him so that he may place all relevant materials before the Chief Engineer concerned (Respondent No. 2).

Taking into account the fact that the petitioner has sought voluntary retirement and is only interested in getting his salary for the period he has worked, this Court directs that the petitioner may file a fresh representation before the Respondent No. 2 along with all the documents in support of



his claim within a period of four weeks from today. On receipt of such representation, the Respondent No. 2 shall, after hearing all the parties concerned as well as looking at the entire materials, shall pass a reasoned order within a period of eight weeks, to be counted from the date of filing of such representation.

With the aforesaid observation / direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

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