

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12099 of 2012

Vinod Kumar Roy S/O Late Tej Narayan Roy R/O Mohalla- Lohiya Nagar,
East To K. Oil Depot, Ward No. 9, P.S. And District- Supaul

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Department Of Transport, Government Of Bihar, Patna
3. The State Transport Commissioner, Bihar, Patna
4. The Joint Transport Commissioner Department Of Transport, Govt. Of Bihar, Patna
5. The Principal Secretary Water Resources Department (MINOR Irrigation), Government Of Bihar, Patna
6. The Secretary, Water Resources (MINOR Irrigation) Department Government Of Bihar, Patna
7. The Principal Secretary Water Resources Department (IRRIGATION), Government Of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5932 of 2015

Vinod Kumar Roy S/o Late Tej Narayan Roy resident of Lochinagar Ward
No. 9 (Near Kerosene Oil Depot) P.S. & Distt. - Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Department of Transport, Government of Bihar, Patna.
3. The State Transport Commissioner, Bihar, Patna.
4. The Secretary, Department of Transport, Government of Bihar, Patna.
5. The Principal Secretary, Water Resources Department (Minor Irrigation), Govt. of Bihar, Patna.
6. The Secretary, Water Resource (Minor Irrigation), Department Govt. of Bihar, Patna.
7. The Principal Secretary, Water Resources Department (Irrigation), Govt. of Bihar, Patna.
8. The Secretary, Water Resources Department (Irrigation), Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12099 of 2012)

For the Petitioner/s : Mr. Subodh Kumar Jha

For the Respondent/s : Mr. Nivedita Nirvikar

(In Civil Writ Jurisdiction Case No. 5932 of 2015)

For the Petitioner/s : Mr. Karuna Kant Jha

For the Respondent/s : Mr. Gp29- Sadanand Paswan



CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT

Date : 30-11-2018

Heard Mr. Subodh Kumar Jha, learned counsel for the petitioner assisted by Mr. Karuna Kant Jha and Mr. Arbind Kumar, A.C. to G.A.-9 for the respondent-State.

C.W.J.C. No. 12099 of 2012 has been filed for quashing of the order dated 10.05.2012 issued under the signature of the respondent no. 2, the Principal Secretary, Department of Transport, Government of Bihar which according to the petitioner has unilaterally reviewed the earlier order passed by the Hon'ble Minister-cum-Appellate Authority, Transport Department dated 08.02.2012 communicated to the petitioner on 10.02.2012, passed in Appeal Case No. 01 of 2010, challenging as to whether a quasi-judicial order can be superseded by an administrative order unilaterally without notice to the petitioner or affording opportunity of hearing. An additional prayer has been made for entire arrear of salary due since August, 2008 and treating him to be in continuous service in the Department of Transport in view of the order dated 08.02.2012 as contained in Annexure-2. However, during pendency of the present writ application, the petitioner superannuated from service w.e.f. 30.06.2014 and since petitioner was aggrieved by non-payment of salary since



August, 2008 and post-retiral benefits, C.W.J.C. No. 5932 of 2015 has been preferred by the petitioner and claim is advanced for ACPs/MACPs benefit and arrears of salary accrued due to ACPs/MACPs calculated on the basis of 6th pay revision, dues of salary from September, 2008 till superannuation and post-retiral benefits from the date of superannuation i.e. 30.06.2014. An additional prayer has been made in C.W.J.C. No. 5932 of 2015 as to fixation of burden of his claim upon either of the two departments i.e. the Water Resources, Minor Irrigation Department where the petitioner was earlier transferred way back in the year 1984 or from the Transport Department, Government of Bihar where he joined as Motor Vehicle Inspector in the year 1996. Thus, for the sake of convenience, the facts of C.W.J.C. No. 12099 of 2012 is taken up which will decide the controversy raised in C.W.J.C. No. 5932 of 2012 as well.

The brief facts relating to the present controversy is that the petitioner was appointed as a Junior Engineer (Civil) on 12.03.1979 under the Water Resources Irrigation Department. On 17.8.1984, the petitioner was transferred from Water Resources Irrigation Department to Water Resources Minor Irrigation Department, Government of Bihar. The petitioner was



sent of deputation on 15.03.1996 in the Transport Department as a Motor Vehicle Inspector with a stipulation that as and when the appointment of Motor Vehicle Inspectors would be made, the petitioner would revert back to his parent department with a further stipulation that the petitioner would be also sent to his parent department at any point of time and would not be entitled to special pay or deputation allowances but payment of his salary would be made on the vacant post of the Motor Vehicle Inspector. Subsequent thereto, petitioner joined as a Motor Vehicle Inspector in the Transport Department, Government of Bihar on 16.03.1996. During his tenure as a deputationist Motor Vehicle Inspector, on account of certain misconduct a charge memo was served on him and departmental proceeding was initiated by the Transport Department, Government of Bihar. A major penalty order was passed vide Memo No. 5624 dated 09.09.2008 imposing penalty of stoppage of four increments with cumulative effect as well as the petitioner was sent back to his parent department with immediate effect (Annexure-2 of C.W.J.C. No. 5932 of 2015). The petitioner challenged the penalty order before the Hon'ble High Court of Patna in C.W.J.C. No. 14123 of 2009 which was withdrawn on 07.11.2009 with a liberty to avail the alternative remedy of



appeal. The appeal filed by the petitioner before the Hon'ble Minister Transport on 22.12.2009 having not been disposed, the petitioner again preferred a writ application before this Court being C.W.J.C. No. 16409 of 2011 which was disposed of by order dated 15.11.2011 for disposing of the appeal by the Appellate Authority. The Appellate Authority decided the appeal preferred by the petitioner being Appeal No. 01 of 2010 vide order dated 08.02.2012 (Annexure-2 of C.W.J.C. No. 12099 of 2012) quashing the order dated 09.09.2008 and the major penalty of stoppage of four increments with cumulative effect was substituted by warning. A further stipulation was that the petitioner would be retained as a Motor Vehicle Inspector in the Transport Department and his services would be treated as continuous from August 2008 and salary would be paid from the Transport Department.

However, the Principal Secretary, Transport Department unilaterally took a decision vide letter no. 1054 dated 06.03.2012 as contained in Annexure-8 stating therein that since the services of the petitioner has been returned back to the Water Resources Department w.e.f. 09.09.2008 hence observed that the petitioner be requisitioned for deputation in the Transport Department from the Water Resources Department



and after getting details of the payment of salary made to the petitioner from 09.09.2008 steps be taken for payment of salary to the petitioner. Petitioner filed representation which are Annexures-9 and 10 on 14.09.2012 and 02.06.2012 before the Principal Secretary, Transport Department that his services were never taken back by the Water Resources Department in spite of the punishment order no. 5624 dated 09.09.2008 and neither his joining is being accepted nor any payment of salary is being made. Again an order dated 10.05.2012 was passed by the Principal Secretary, Department of Transport reviewing the order of the Appellate Authority dated 08.02.2012 that till the dispute regarding salary w.e.f. 09.09.2008 till the date of order of the Appellate Authority i.e. 08.02.2012 is resolved by the Water Resources Department and then requisition for deputation of the petitioner be made from the Water Resources Department the petitioner could not be taken in the services of Transport Department.

Learned counsel for the petitioner submits that the punishment order dated 09.09.2008 was quashed by the Hon'ble Minister-cum-Appellate Authority, Transport Department on 08.02.2012 in Appeal No. 01 of 2010 but the Principal Secretary, Transport Department has unilaterally



modified and reviewed the order of the Appellate Authority by its order dated 06.03.2012 and 10.05.2012 without any notice to the petitioner and without any opportunity of hearing which is in violation of the principles of natural justice and is ab initio void. He further submits that against the order passed by the Principal Secretary dated 10.05.2012 by which the order of the Appellate Authority dated 08.02.2012 had been reviewed which has been challenged in C.W.J.C. No. 12099 of 2012 and an order of stay till further orders has been passed by this Court by order dated 13.07.2012. The petitioner all along was ready to join as a Motor Vehicle Inspector after the punishment order was quashed but was not taken into service in the Transport Department and eventually he superannuated from service w.e.f. 30.06.2014.

A counter affidavit has been filed by the respondent no. 2, the Principal Secretary, Department of Transport stating therein that the punishment order having been revoked by the Appellate Authority, the implementation of the order appeared difficult as since 09.09.2008 till 14.03.2012 i.e. the period of 43 months the petitioner did not join his parent Department and remained unauthorisedly absent and in order to remove the said anomaly as the services of the petitioner had been repatriated to



the parent Department i.e. the Water Resources Department on the date of punishment order dated 09.09.2008, hence his services would again ought to have been made available to the Transport Department by the parent Department i.e. the Water Resources Department. Thus, there was no modification of the revocation of the punishment order but review of the order of the Appellate Authority which was on the approval of the Appellate Authority.

Learned counsel appearing on behalf of the State thus submits that the services of the petitioner was returned to the parent Department vide letter no. 5623 dated 09.09.2008 which is Annexure-A to the counter affidavit of respondent no. 2. Learned counsel for the State further submits that it was because of administrative and technical difficulties and since the parent Department i.e. the Minor Water Resources Department had not again deputed the petitioner, hence, the borrowing Department could not again take the petitioner in services of the Transport Department on deputation.

A counter affidavit has also been filed by the respondent no. 8 i.e. the Secretary, Water Resources Department in C.W.J.C. No. 5932 of 2015 stating therein that on account of such non-joining, a departmental proceeding has



been contemplated against the petitioner by the Minor Water Resources Department vide letter dated 17.07.2015 which is Annexure-B to the counter affidavit filed in C.W.J.C. No. 5932 of 2015. It has also been stated in the counter affidavit filed by the Water Resources Department in para 18 to 22 that necessary steps are being taken to expedite the matter so that the grievance of the petitioner could be redressed. For ready reference para 18 to 22 is quoted hereinbelow:

“18. That it is further stated that again the Transport Department was requested by the letter memo no. 3577 dated 30.07.2015, to make available the Vigilance Clearance Certificate of the petitioner for the periods from 1996 to 2014 and further request has been made to provide the Confidential Report of the petitioner from the year of 1997 to 2009. Although the response of the Transport Department in this regard is till awaited.

19. That it is submitted that Departmental screening Committee meeting was held as on 14.07.2015 with a sole object to provide financial up-gradation



under Modified Assured Career Progression Scheme (MACPS), which was headed by the Secretary, Water Resources Department, Government of Bihar, Patna, the petitioner's matter for ACP was placed before the said Committee but due to non availability of Confidential Report and Vigilance Clearance Certificate of the petitioner of the wanting year, the matter was not decided by the said Committee and accordingly, the matter was kept on hold/pending for required papers.

20. That in this regard the reminder has also been sent to Transport Department by letter memo no. 4259 dated 01.09.2015, to provide Confidential Report and Vigilance Clearance Certificate of the petitioner of the wanting year; the matter was not decided by the said Committee and accordingly, the matter was kept on hold/pending for required papers.

21. That in this regard



the reminder has also been sent to Transport Department by letter memo no. 4259 dated 01.09.2015, to provide Confidential Report and Vigilance Clearance Certificate of the petitioner. Although, the response of the Transport Department in this regard is still awaited.

22. That as soon as the required paper will be provided by the Transport Department, Government of Bihar, Patna, immediately thereafter, further necessary steps would be taken to expedite the matter in its correct perspective and grievances of the petitioner will be redressed in accordance with law.

Heard the parties.

The petitioner was appointed as Junior Engineer (Civil) on 12.03.1979 under the Water Resources Irrigation Department. On 17.08.1984, he was transferred to the Minor Water Resources Department. On 16.03.1996, he was deputed



as a Motor Vehicle Inspector in the Transport Department and due to certain misconduct, a departmental proceeding was initiated in which vide memo no. 5624 dated 09.09.2008 a punishment of stoppage of four increments with cumulative effect as well as it was ordered that the petitioner be sent to his parent Department with immediate effect. The penalty order was set aside by the Appellate Authority in Appeal No. 01 of 2010 vide order dated 08.02.2012 with stipulation that the petitioner would continue as a Motor Vehicle Inspector and the salary from the period August, 2008 be paid with immediate effect. The Principal Secretary, Transport Department unilaterally modified and reviewed the order of the Appellate Authority vide memo no. 1054 dated 06.03.2012 and also memo no. 1811 dated 10.05.2012 as contained in Annexure-8 and Annexure-11 in C.W.J.C. No. 12099 of 2012. While not interfering with the quashing of the punishment order dated 09.09.2008, a stipulation was added that the Water Resources Department would be requested to again depute the petitioner in the Transport Department and payment of the intervening period 09.09.2008 till deputation would be paid by the Water Resources Department. The petitioner was on deputation in the Transport Department the parent Department being the Minor



Water Resources Department. The Departmental proceeding initiated against the petitioner by the borrowing department itself was de hors the Rules and any misconduct was to be dealt with by the parent Department. But since the punishment order has been quashed by the Appellate Authority of the Transport Department, the issue becomes academic as no punishment order exists. Fact is that no requisition for deputation of the petitioner was ever sent by the Transport Department to the Water Resources Department even after the punishment order was quashed by the Appellate Authority. The petitioner also did not join in his parent Department i.e. the Water Resources Department till his superannuation on 30.06.2014. A departmental proceeding was contemplated by the Water Resources Department at one point of time but subsequently from para-18 to 22 of the counter affidavit of the Water Resources Department it is evident that steps are being taken to expedite and redress the grievance of the petitioner. Hence, the parent Department i.e. the Water Resources Department or the Minor Water Resources Department, Government of Bihar, Patna would be liable for payment of dues to the petitioner in the light of the statements made in para-18 to 22 of the counter affidavit filed by the Secretary, Water Resources Department,



respondent no. 8 in C.W.J.C. No. 59320 of 2015 quoted hereinabove. Such decision is to be taken expeditiously by the respondent no. 8 preferably within a period of three months from the date of receipt/production of the copy of the order.

The writ application is allowed with the aforesaid observations.

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	16.08.2018
Uploading Date	01.12.2018
Transmission Date	

