

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.602 of 2017

IN

Civil Writ Jurisdiction Case No. 13583 of 2012

With

Interlocutory Application No. 2374 of 2017.

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Jagannath Prasad Singh, son of Late Bindhyachal Singh, Resident of Village -
Sinahi, Police Station - Paroo, District - Muzaffarpur.

.... (Petitioner) Appellant

Versus

1. The State of Bihar.
2. The Secretary, Department of Co-operative Govt. of Bihar, New Secretariat,
Patna.
3. The District Magistrate, Vaishali, Hajipur.
4. The Additional District Magistrate (Establishment), Vaishali, Hajipur.
5. The Circle Officer, Bhagwanpur, District - Vaishali.
6. The Provident Fund Officer, Hazipur, Vaishali.
7. The Accountant General, Bihar, Patna

.... (Respondents) / Respondents

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Appearance:

For the Appellant/s : Mr. Kundan Kumar Sinha, Advocate.

For the Respondent/s : Mr. Rajballabh Prasad Yadav, AAG 11.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-03-2018

Seeking exception to an order dated 19.12.2016 passed by
the Writ Court in CWJC No. 13583 of 2012, this appeal has been filed
under Clause 10 of the Letters Patent.

2. Learned counsel for the State Government raises a



preliminary objection with regard to maintainability of this appeal on the ground that the Writ Petition was withdrawn by learned counsel representing the petitioner with leave to ventilate the grievance after Cr. Appeal No. 362 of 2007 (DB) pending before this Court is decided and having withdrawn the Writ Petition the petitioner cannot be permitted to file this appeal.

3. We will deal with this issue separately but before that we would like to bring on record certain facts which are relevant for deciding the various Issues involved in the matter.

4. The petitioner joined the services in the department in question on 04.02.2002 after order was passed by the Collector, Vaishali and, on attaining the age of superannuation, has retired on 30.01.2009. However, while in service, a police case was registered against the petitioner being Paroo P.S. Case No. 51/2000 for offences committed by the petitioner under Sections 302, 379/34 of the Indian Penal Code. He was subjected to trial in Sessions Trial No. 36/2001 and convicted with punishment of life imprisonment.

5. Challenging the aforesaid conviction, a Cr. Appeal filed by the petitioner being Cr. Appeal No. 352/2007 (DB) is pending before this Court and vide order passed on 04.05.2007 suspension of sentence had been ordered and the petitioner was granted bail. Initially, after the conviction was ordered, the petitioner was



suspended by the department but when he was released on bail after suspension of sentence the petitioner was taken back on duty and permitted to work and retired on attaining the age of superannuation on 30.01.2009. In the meanwhile, after his retirement, a sum of Rs. 25,344=00 towards Provident Fund and a sum of Rs. 804=00 towards Group Insurance were paid to him but on the ground that he was only appointed in the year 2002 and retired before completing 10 years of service, pensionary benefits were not granted to him. Petitioner represented in the matter and pointed out that in view of the policy and resolution of the State Government as contained in resolution dated 26.02.2004 (Annexure-6) the past service rendered by the petitioner in the department as Debt Manager should be counted and treating him to have worked for 10 years pension should be granted to him in view of Clause 3 of the resolution dated 26.02.2004 (Annexure-6). Noting was done and the matter was kept pending and when pensionary benefits were not granted, the Writ Petition was filed.

6. In the Writ Petition no relief has been granted to the petitioner and the petitioner contends that his counsel who appeared in the Writ Petition on 19.12.2016 without his instructions and without his consent has withdrawn the Writ Petition and, in the Memorandum of Appeal, specific averment in this regard has been made.



7. Having considered the contentions advanced we find that even though the petitioner has been convicted and his conviction is *sub judice* before this Court in Cr. Appeal No. 352/2007 (DB), because of his conviction neither the services of the petitioner were terminated nor any order passed after following due process under Section 43 of the Bihar Pension Code, on the contrary the petitioner was permitted to retire and when he raised a claim for payment of pension nothing has been done and his claim has not been considered in the backdrop of the right available to him under the resolution dated 26.02.2004 (Annexure-6).

8. That being so, interest of justice requires that the petitioner's claim for pension in the light of the resolution as mentioned hereinabove should be examined and considered by the competent authority and a detailed order passed, either allowing or rejecting the claim of the petitioner by reasons to be recorded. To that extent liberty should be granted to the petitioner and merely because of misapprehension and without proper instructions, counsel withdrew the earlier Writ Petition, filing of the same should not come in the way of the petitioner in staking his claim at least for considering his right to receive pensionary benefits in accordance with the policy decision and the resolution of the State. Accordingly, we are not inclined to dismiss this Appeal on the preliminary objection raised by



the learned counsel for the State.

9. We are of the considered view that in withdrawing the Writ Petition filed by the petitioner on the ground that he can ventilate his grievance after Cr. Appeal No. 352/2007 (DB) is decided, learned counsel for the petitioner may have committed some error and this should not come in the way of the petitioner for canvassing his claim for pension. Accordingly, we allow this appeal, accept the prayer of the petitioner to quash the order dated 19.12.2016 passed in CWJC No. 13583 of 2012 and dispose of the Writ Petition with the following directions:-

(i) On the petitioner's filing a certified copy of this order along with a detail representation claim seeking his right to pension, the respondents shall consider the claim of the petitioner for grant of pension in accordance with the rules governing grant of pension to government employees, resolution and circulars in this regard, particularly resolution dated 26.02.2004 (Annexure-6) and decide his representation by a speaking order within a period of sixty (60) days of his representation.

(ii) In case the representation of the petitioner is rejected, reasons for the same shall be indicated.

10. Needless to emphasize that in case petitioner is still aggrieved by the order, if any, passed, liberty shall be available to the



petitioner to challenge it in accordance with law.

11. The appeal stands disposed of accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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