

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15866 of 2016

Subodh Kumar Son of Late Sadanand Prasad, Resident of Village and Post-Madanpur Kajra, District- Lakhisarai, At Present Resident of Mohalla-Purandarpur, Hiran Kutir in the Gali in front of Durga Mandir, Patna, P.S.-Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Deputy Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, Building Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, South Bihar Circle, Building Construction Department, Government of Bihar, Patna.
6. The Executive Engineer Garden Division, Building Construction Department, Government of Bihar, Patna.
7. The Executive Engineer, Patna Building Pramandal, Building Construction Department, Patna.
8. Mr. Ravindra Prasad, then Executive Engineer, Patna Building Pramandal, Building Construction Department, Patna-cum-Conducting Officer, C/o the Executive Engineer, Patna Building Pramandal, Building Construction Department, Patna.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Verma, Adv.
For the State	:	Mr.H.S. Roy, AC to AG
For the A.G.	:	Mr. L.P.K. Raigrihar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 14-08-2019

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

In the present case, the petitioner is challenging the order of punishment contained in Memo No. 3150 dated 14.7.2015



(Annexure-12) passed by the Superintending Engineer, South Bihar Circle, Building Construction Department (respondent no.5), whereby and whereunder, the petitioner has been inflicted punishment of stoppage of two increments with non-cumulative effect.

The petitioner was an ex-Mali, was discharging the function of preparing the bills. It was found that the retrial benefit of two Malis, namely, Sri Kodai Prasad and Sri Sitaram Pal was credited in the account of the petitioner, later on, the petitioner has deposited the amount in the government account but, after 81 days, a departmental proceeding was initiated and the punishment has been awarded by way of stoppage of two increments with non-cumulative effect.

Learned counsel for the petitioner has placed reliance on the letter no. 323 dated 12.2.2013 wherein the punishment of two increments has been awarded by exercising administrative power and, after the enquiry, the same punishment has been inflicted upon the petitioner which itself indicates how maliciously the punishment has been awarded against the petitioner as mentioned in the final order. It appears that the authority had already decided, in what manner, the petitioner would be treated. Hence, even



before initiation of departmental enquiry, the quantum of punishment was decided and communicated.

In paragraph nos. 17 & 18 of the present writ application, details of accountancy has been explained in respect of crediting the amount of the Ex-Mali.

The order impugned is appealable in nature and, it appears that the petitioner, without exhausting the alternative remedy of filing appeal, has straightway approached this Court.

This Court is not going into the merit of the case but, if the petitioner approaches the appellate authority within a period of four weeks from today, the appellate authority will be obliged to decide the case of the petitioner taking into consideration the statement made in paragraph nos. 17 & 18 of this writ application elaborating the function of the Department in the matter of settling the account by the Account Department and the Treasury Department.

Learned counsel for the petitioner has drawn attention of this Court towards the fact that the petitioner has already superannuated from service but, till date, not a single farthing has been paid to him by way of retirement benefit. He further submits that the petitioner has not been given even the payment under the head of G.P.F., leave encashment or the gratuity.



In view of the aforesaid situation, the petitioner is entitled to be paid the entire amount of G.P.F. because it is the money of the petitioner who has deposited during his service period as well as the leave encashment amount and, so far, the pension and gratuity is concerned, at least he is entitled to the provisional pension at the rate of 90%.

If the aforesaid benefit has not been given to the petitioner as yet, this Court directs the respondents that the same should be paid to the petitioner within a period of four weeks from today subject to condition the petitioner has filled up the proper form for entitlement of grant of pensionary benefit.

As far as other issues are concerned, the appellate authority will consider the same and will take decision in accordance with law.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2019
Transmission Date	

