

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.159 of 2019

In
Letters Patent Appeal No.2023 of 2015

=====

Chandra Deo Prasad, S/o Late Gopal Prasad, resident of Mohalla A/30
Sadhanapuri, Road No. 6, P.S. Gardanibagh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Secretary Road construction Department, Bihar, Patna
3. Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary
Road construction Department, Bihar, Patna.
4. The Executive Engineer Road construction Department, Shahabad Patha
Pramandal, Arrah.
5. The Assistant Engineer Shahabad Patha Pramandal, Arrah

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ray Saurabh Nath, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar, AC to AAG-11

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-08-2019

Re: Interlocutory Application No.01 of 2019

Heard learned counsel for the parties.

The cause shown is sufficient. The delay is
condoned. The Civil Review Application shall be treated to be
within time. Interlocutory Application stands allowed.



Re: Civil Review No.159 of 2019

Heard learned counsel for the applicant.

This review application has been filed praying for review of the impugned judgement dated 30th January, 2017.

Learned counsel for the applicant contends that the petitioner-applicant had filed a writ petition simply for a mandamus for consideration of his claim for payment of Rs.43,000/- which, according to him, was due for the payment after his retirement as a Junior Engineer. The respondents appeared to have filed a counter affidavit disputing the said claim on the strength of a recommendation of a Liability Committee and rejection of claim by the Engineer-in-Chief on 24th July, 2008. The writ petition was only for a mandamus that the applicant should be given an opportunity to get his claim considered in accordance with the documents which were on record making recommendations for payment to him way back in the year 1996 itself. According to the learned counsel for the applicant-appellant, the said documents which were in favour of him had not been taken into consideration either by the Engineer-in-Chief or by the Liability Committee.

Thus, complaining of violation of the principles of natural justice, a prayer was made for a mandamus to revisit the



matter in the light of the above.

We find that the said issue has not been considered by the Division Bench while dismissing the appeal and without adverting to the aforesaid aspect of the matter, the appeal has been dismissed confirming the order of the learned Single Judge on the ground that such settlement of claim cannot be gone into in the exercise of jurisdiction under Article 226 of the Constitution of India.

We are unable to subscribe the said view and there is an error apparent on the face of record, inasmuch as, the prayer in the writ petition was for a mandamus to decide the claim and the applicant had not come forward for a decision of the calculation or the actual entitlement of the appellant but only for a consideration of his claim in the light of the documents which had not been noticed either by the Engineer-in-Chief or by the Liability Committee and we, therefore, find this to be an error apparent on the face of record and, accordingly, we recall the judgment dated 30.01.2017 passed in LPA No.2023 of 2015 and restore the appeal to its original file.

The Civil Review Application stands allowed.

Re.: LPA No.2023 of 2015

Having heard learned counsel for the appellant on the



merits of the appeal and also the learned counsel for the State of Bihar, we find that the issue could have been resolved by issuing a simple direction to the concerned Engineer-in-Chief to revisit the matter in the light of what was being alleged by the appellant. The learned Single Judge by the impugned judgement dated 20th February, 2015 simply rejected the writ petition that this being a disputed question of fact cannot be gone into in the exercise of jurisdiction under Article 226 of the Constitution of India.

We also agree that such question of fact cannot be effectively adjudicated, but at the same time, a mandamus can always be issued for the consideration of claim which is based on some document which the applicant is alleged to have not been considered by the authority at the time of passing of the order.

The contention of the learned counsel for the appellant that no opportunity was given to contest the status of the Liability Committee note appears to be correct. By placing reliance on the same and not giving an opportunity to the appellant to contest the same clearly violates the principles of natural justice.

Consequently, we allow the appeal and set aside the



impugned judgement dated 20th February, 2015 with a direction to the Engineer-in-Chief, respondent no.3 in the writ petition, to take an appropriate decision in the matter after considering the documents which have been relied on by the appellant in accordance with law and pass an appropriate order, preferably within a period of three months from the date of presentation of a certified copy of this order.

Allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2019
Transmission Date	

