

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10754 of 2018

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Akhilesh Kumar Sharma Son of Late Kedar Nath Sharma, Resident of Village- Gorhna, P.O.- Neora, P.S.- Bihta, District- Patna, presently residing at Flat No.405, Surya LAXmi Vila Apartment, Ram Jaipal Path, Bailey Road, P.O.- Danapur, P.S.- Rupaspur, District- Patna, the retired Executive Engineer, Building Construction Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Additional Secretary, Building Construction Department, Government of Bihar, Patna.
5. The Treasury Officer, Bishweshwaraiya Bhawan, Bailey Road, Patna.
6. The Accountant General, Bihar, Patna.
7. The Assistant Accountant General Office of the Accountant General, Bihar, Patna.

... .. Respondent/s

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with
Miscellaneous Jurisdiction Case No. 940 of 2019
In
Civil Writ Jurisdiction Case No.10754 of 2018

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Akhilesh Kumar Sharma S/o Late Kedar Nath Sharma Resident of Village- Gorhna, P.O.- Neora, P.S.- Bihta, District- Patna, presently residing at Flat No.405, Surya LAXmi Vila Apartment, Ram Jaipal Path, Bailey Road, P.O.- Danapur, P.S.- Rupaspur, District- Patna, the retired Executive Engineer, Building Construction Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Sri Deepak Kumar, son of not known to the petitioner, presently posted as the Chief Secretary, Govt. of Bihar, Patna
2. Sri Chanchal Kumar S/o not known to the petitioner presently posted as the Principal Secretary, Building Construction Department, Govt. of Bihar, Patna



3. Sri Rakesh Kumar Chaudhary S/o not known to the petitioner presently posted as the Treasury Officer, Bishweshwaraiya Bhawan, Bailey Road, Patna

... .. Opposite Party/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10754 of 2018)

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

Mr. Kislay Raj, Adv.

Mr. Ravi Ranjan, Adv.

For the Respondent : Mr. R.K. Chandran, A.C. to G.P.19

(In Miscellaneous Jurisdiction Case No. 940 of 2019)

For the Petitioner/s : Mr. Anita Kumari, Adv.

For the Opposite Party/s : Mr. Raj Ballabh Prasad Yadav, AAG-11

for the AG. Mr. Ravindra Priyadarshi, Adv.

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date : 14-05-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing on behalf of the Accountant General, Bihar, Patna.

Petitioner has filed the interlocutory application being I.A. No. 6196 of 2018 for challenging the resolution dated 03.08.2018 whereby under the proceeding under the Pension Rules 1950 initiated against the petitioner entire pension has been forfeited which is contained in Annexure-P/17 and challenged in the said interlocutory application.

Considering the same, Interlocutory Application being I.A. No. 6169 of 2018 is allowed.

Petitioner in the present writ application prays for the following reliefs:



“(I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to pay the amount of pension, gratuity and leave encashment to the petitioner on the basis of last pay which the petitioner would have drawn, had he not been arbitrarily dismissed from service after modifying the pension payment orders issued in favour of the petitioner vide P.P.O. No. 201811011135PO and payment of leave salary authorized in favour of the petitioner vide letter no. 16993 dated 27.04.2018 which has been sanctioned in favour of the petitioner on the basis of last pay drawn by him when he was placed under suspension and a departmental proceeding was initiated.

(II) For a declaration that if the termination order has been set aside by a bench of this Hon’ble Court and the Respondent department did not pass any fresh order thereafter and till date in view of the liberty granted by a bench of this Hon’ble Court while setting aside the termination order, the petitioner would be deemed to be in service until the date of his retirement for all practicable purposes for which he would have been entitled had he not been dismissed from service by the disciplinary authority.



(III) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to recalculate the entitled of the petitioner regarding his pension, gratuity and leave encashment payable to the petitioner and for issuance of modified payment orders accordingly.

(IV) For issuance of any order appropriate writ/writs order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

Petitioner was initially proceeded departmentally and as per the vigilance report and the inquiry so conducted in the departmental proceeding, an order of dismissal from service was passed vide memo no. 11452 dated 11.11.2014 by the State Government in its Building Construction Department issued under the signature of the Joint Secretary-cum-Officer on Special Duty-cum-Chief Vigilance Officer. The said order was challenged by the petitioner in C.W.J.C. No. 2015 of 2015 and this Court found that the disciplinary authority while holding disciplinary proceeding had ignored the settled position of law. Hence, the order of dismissal dated 11.11.2014 together with the inquiry report was quashed by order dated 06.02.2017. It is relevant to mention here



that the petitioner during the pendency of the earlier writ application being C.W.J.C. No. 2015 of 2015 retired on 31.03.2016. However, a liberty was given to the State Government to take a decision whether to proceed against the petitioner in accordance with law and under the Pension Rules, 1950 within a period of six months from the date of receipt/production of the copy of the order dated 06.02.2017. It was however, made clear that failure on the part of the State Government to take decision to continue the proceeding against the petitioner as well as to pass a final order within a period of six months from the date of receipt/production of the copy of the order for reasons not attributable to the petitioner, would result in revocation of the said liberty.

Learned counsel for the petitioner submits that the order passed by this Court in C.W.J.C. No. 2015 of 2015 was communicated to the authorities by the petitioner to the Principal Secretary, Building Constriction Department on 28.02.2017 which is Annexure-P/13. He submits that a departmental proceeding under the Pension Rules had to be concluded within six months from the date of receipt/production of the copy of the order i.e. by 28.08.2017 as per the time frame as directed by this Court. He submits that the order forfeiting 100% pension was passed by the



State Government under the signature of the Joint Secretary, Building Construction Department on 03.08.2018 much beyond the time given by this Court in the earlier round of litigation and the delay has not been attributable to the petitioner neither the order mentions any delay on the part of the petitioner. From the plain reading of the impugned order dated 03.08.2018 as contained in Annexure-P/17 from para-8 onwards, it is evident that the departmental proceedings were converted under the Pension Rules, 1950 on 15.05.2017 and a second show cause notice was issued to the petitioner on 30.10.2017 i.e. much beyond the period of six months allowed by this Court in the earlier round of litigation. Specific direction was given to the State Government in C.W.J.C. No. 2015 of 2015 to take a decision and conclude the proceedings within six months from the date of receipt of the said order and if not done within the said period would amount to revocation of the said liberty. But the order passed was much beyond the period of time granted by this Court.

A second supplementary counter affidavit has been filed on behalf of the respondent nos. 1 to 4 stating therein at para-7 that a M.J.C. No. 2863 of 2017 was filed for extension of time for completing the proceedings under Pension Rules, 1950 which was withdrawn by the concerned advocate on 16.05.2018. This shows



that no extension of time was allowed by this Court for compliance of the order passed in the earlier writ application.

Considering the submissions of the parties and the order passed by this Court in C.W.J.C. No. 2015 of 2015 for continuance and conclusion of the departmental proceeding within six months which was not complied by the State Government. Under such circumstances, the order of punishment of forfeiture of 100% of pension passed by the State Government as contained in Annexure-P/17 is quashed. The respondent no. 2, the Principal Secretary, Building Construction Department, Government of Bihar is directed to make payment of all retiral benefits of the petitioner within a period of three months from the date of receipt/production of the copy of this order treating the retirement of the petitioner as 31.03.2016 with all the benefits as if he was in service till the date of his retirement.

Writ application is allowed. M.J.C. No. 940 of 2019 stands disposed of accordingly.

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2019
Transmission Date	NA

