

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13161 of 2019

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Chandra Shekhar Paswan, Son of Late Jageshwar Paswan, Resident of Village
and P.O. Sahuri, P.S. Birpur, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Joint Secretary to Government, Water Resources Department, Government of Bihar, Patna.
4. Deputy Secretary to Government, Water Resources Department, Government of Bihar, Patna.
5. Conducting Officer, Cum-Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha
For the Respondent/s : Mr. Vikash Kumar (SC11)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 03-07-2019

1. Heard the learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 28.09.2018 contained in Memo No. 2194, whereby he has been subjected to a punishment of deduction of 5 per cent pension for five years.

3. It appears that the petitioner while working as Superintending Engineer, Irrigation Division, Purnea was subjected to a departmental proceeding for having wrongly



rejected the technical bid of M/s Ratilal Yadav Construction. It appears from the records that there were two tenders which were sent to the petitioner in his capacity as Superintending Engineer for being approved and forwarded. The pre-qualification of M/s Ratilal Yadav Construction, one of the bidders, was not found to be in order. It has been reported by the Executive Engineer that there were over-writing in the NSC certificates and character certificate of the company, which report of the Executive Engineer was perused by the petitioner, and approved and forwarded to the Chief Engineer. Later, the Proprietor of M/s Ratilal Yadav Construction challenged the aforesaid decision of giving the tender to Ma Saroj Construction Company. Under the orders of the Chief Engineer, the bid was ultimately granted to M/s Ratilal Yadav Construction and the work was completed. During the period that the petitioner served the department but at a different place, there was an enquiry by Flying Squad and it was found that there was an excess payment of Rs. 25,761/-. A departmental proceeding was initiated against him. The enquiry officer on finding the allegations against the petitioner to be



absolutely perfunctory and not proved, exonerated him. Before any decision could be taken by the disciplinary authority, the petitioner superannuated. After a lapse of about three years, the proceedings were revived under Section 43(B) of the Bihar Pension Rules, 1950 and a second show-cause notice was given to the petitioner intimating that the opinion of the enquiry officer was not accepted by the government. The petitioner was charged with taking a decision which, if allowed to remain, would have caused pecuniary loss to the government.

4. It is necessary here to state that the decision of the petitioner of accepting the recommendation of Executive Engineer regarding rejection of the technical bid of M/s Ratilal Yadav Construction was not sustained and under orders of the Chief Engineer, M/s Ratilal Yadav Construction only was awarded the bid and the work under contract was completed.

5. Thus, charge against the petitioner is only of taking such a decision, which if allowed to be continued, would have caused pecuniary losses.



6. Learned counsel for the petitioner has drawn the attention of this Court to the various lapses in the departmental proceeding. As an instance thereof, it has been pointed out that when the enquiry report was not accepted by the government, no cogent reason was accorded for the difference of opinion and it was merely stated in the second show-cause notice that the opinion of the enquiry officer has not been accepted. Apart from this, it has been pointed out that under Section 43(B) of the Bihar Pension Rules, 1950, the State Government has a right to withhold or withdraw the pension or any part of it whether permanently or for a specified period if it is found in departmental proceeding or judicial proceeding that the employee is guilty of grave misconduct or has caused pecuniary loss to the government by such misconduct or negligence during his service.

7. In the case in hand, I find that there is no charge of any misconduct. There has not been any pecuniary loss to the government because of a decision taken by the petitioner, which decision was overturned. Apart from this, the proceeding suffers from lack of application of mind in as much as there is



no reason assigned for differing with the opinion of the enquiry officer. Any order to be sustained in the eyes of law has to be informed one and must be a speaking order. A loss which may have occurred if the decision of the petitioner would have been allowed to be continued is not a ground on which the pensionary benefits of the petitioner could be deducted and that also for five years. The order passed by the disciplinary authority militates against the logic, reason and the requirement under Section 43(B) of the Bihar Pension Rules, 1950. There is nothing in the order to indicate that there was any tangible loss for some time when a decision was taken by the petitioner to oust M/s Ratilal Yadav Construction and suggest for acceptance of the bid of another bidder.

8. There is force in the submission of the learned counsel for the petitioner that nothing could be collected during the course of enquiry that it was with any culpable intention that the bid of M/s Ratilal Yadav Construction was rejected. The bid was rejected on the ground of over-writing in the character certificate and the NSCs, which led the bid absolutely suspicious and doubtful. As an officer of the department, the



action of the petitioner ought not to have been adversely commented upon, on the ground that the bidder whose technical bid was rejected later agreed to work at a lesser cost than the specified rate.

9. Here, there is no grave misconduct or any pecuniary loss. Even if it were, there is no indication of the same in the order impugned.

10. For the aforesaid reasons, the order is set aside.

11. The matter is remitted to the Deputy Secretary, Water Resources Department, Government of Bihar, Patna for writing out a fresh order in accordance with law within a period of six weeks from the date of production/communication of a copy of this order.

12. With the aforesaid observation / direction, this petition stands allowed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	04.07.2019
Transmission Date	

