

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19802 of 2019

Vinod Kumar Sinha, Son of late Girwardhari Sharan Sinha, Resident of Nayi Basti, Mahadeva, P.S. Siwan Mufassil, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar Through the District Magistrate, Siwan.
2. The Divisional Commissioner, Saran Division, Chapra.
3. The District Magistrate, Siwan.
4. The Deputy Collector (Establishment), Siwan.
5. The Enquiry Officer-Cum-Additional Collector, Siwan.
6. The Presenting Officer-Cum-District Panchayat Raj Officer, Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate Mr. Akhilesh Kumar Sinha, Advocate Mr. Shyama Kant Singh, Advocate
For the State	:	Mr. P. K. Verma, Sr. Advocate AAG-3 Dr. Mankeshwar Tiwari, A.C. to AAG-3

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 13-11-2019

Heard learned counsel for the parties.

2. The petitioner had earlier approached this Court by filing writ application under Article 226 of the Constitution of India giving rise to CWJC No. 3933 of 2016 claiming salary for the period 08.10.2013 to 24.04.2015. It transpires that the petitioner was saddled with the punishment of dismissal from service by an order dated 15.10.2014, when he was working as Head Clerk. The said punishment of dismissal from service was modified by the Divisional Commissioner as an Appellate Authority and the punishment of dismissal from service was



substituted with a lesser punishment of withholding of three annual increments, without cumulative effect. The Appellate Authority also directed that the period of leave and leave without pay available to the petitioner, may be adjusted against the period, during which he was kept out of work under the effect of the order of punishment of dismissal, passed by the disciplinary authority. In the aforesaid background, the petitioner had filed CWJC No. 3933 of 2016 seeking direction for payment of salary.

3. This Court upon examination of the provisions under sub rule 3 of Rule 13 concluded that the petitioner was not entitled for salary as the said provision would apply to circumstance where an order of dismissal, removal or compulsory retirement was set aside on merits, or on the ground of non-compliance of the Rules and no further inquiry was proposed.

4. The order of the Appellate Authority dated 25.04.2015 is being questioned in the present writ application.

5. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is entitled for subsistence allowance for the period, during which he was under suspension. In my opinion, however, the relief which the petitioner is seeking, is hit by the doctrine of constructive *res judicata*, for the reason that the claim which the petitioner is raising in the



present proceeding, could have been raised by him and decided in the earlier proceeding as noted above.

6. In such view of the matter, this writ application cannot be entertained and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
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