

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25411 of 2019

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Birju Ram, son of late Churaman Dusadh @ Churaman, resident of village-
Pachhurukhia, Police Station- Khijarsarai, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, General Administration Department,
Government of Bihar, Patna.
3. The Commissioner, Magadh Division Gaya, District- Gaya.
4. The District Officer, Gaya.
5. The District Establishment Deputy Collector, Gaya.
6. The District Treasury Officer, Gaya.
7. The Block Development Officer Nagar, District- Gaya.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binay Kumar, Advocate
For the State	:	Mr. Ravi Verma, AC to GP 4
For the Accountant General:	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-12-2019

Heard learned counsel for the petitioner; learned AC
to GP 4 for the State and learned counsel for the Accountant
General.

2. The petitioner has moved the Court for the
following reliefs:

*“(i) For issuance of an appropriate writ(s)/
order(s)/direction(s) to quash the order
dated 14.10.2019 passed in Service Appeal
Case No.63 of 2019 by the Court of
Learned Commissioner, Magadh Division,
Gaya, whereby and whereunder the appeal
was dismissed.*



- (ii) *For issuance of an appropriate writ(s)/ order(s) /direction(s) for quashing the order of District Establishment Branch, Collectorate, Gaya, issued to the petitioner vide Memo No.970 dated 15.05.2013 by which 20% pension of petitioner was deducted and only 80% pension was directed to pay as per Rule 43(B) of Bihar Pension Rule.*
- (iii) *For issuance of an appropriate writ (s)/ order(s)/direction(s) for quashing the order of District Establishment Branch, Collectorate, Gaya, issued to the petitioner vide Memo No. 2367 dated 23.11.2013 by which it was directed to pay only his subsistence allowance for suspension period i.e. 14.07.1999 to 01.06.2000 as per Rule 11(3) Part IV of Bihar Government Service (Classification Control and Appeal), Rule 2005.*
- (iv) *For issuance of a writ commanding upon the respondents to pay the benefit of ACP*
- (v) *For issuance of a writ of Mandamus commanding upon the respondent authority to pay the monitory benefit of promotion since the promotion was granted but arrear of increment was given to the petitioner.*
- (vi) *For issuance of any other writ/writs, order/orders, directions/directions, which may deem fit and proper in the facts and circumstances of the case.”*

3. The grievance of the petitioner is that against the order passed against him in the departmental proceeding on 15.05.2013, the revision filed by him before the Commissioner, Magadh Division, has been rejected on the ground that it has been preferred after the period prescribed for filing the same.

4. Learned counsel for the petitioner submitted that he



superannuated on 30.06.2009 from the post of Upper Division Clerk in the District Record Room Office at Gaya, and prior to that he was facing departmental proceeding which ultimately resulted in the order dated 15.05.2013 by which there is 20% reduction of his pension amount in terms of Rule 43(b) of the Bihar Pension Rules, 1950. It was submitted that the petitioner moved the Court in CWJC No.1925 of 2014 against such order which was withdrawn on 27.11.2014 with liberty to take steps for challenging such order. It was further submitted that due to wrong advice the petitioner again filed CWJC No.3725 of 2015 challenging the order dated 15.05.2013, which was dismissed as not maintainable by order dated 15.02.2019 in view of the petitioner having withdrawn the earlier writ. Learned counsel submitted that in terms thereof the petitioner preferred Service Appeal No.63 of 2019 before the Commissioner, Magadh Division, on 09.03.2019, which has been summarily dismissed without going into the merits by order dated 14.10.2019. It was submitted that there is no fault or laches on the part of the petitioner as he was before the Court for the entire period and within one month from the order dated 15.02.2019 passed in CWJC No.3725 of 2015, he had preferred the service appeal.

5. Learned counsel for the State submitted that it is



the petitioner's fault of not availing of the statutory forum despite having withdrawn CWJC No.1925 of 2014 for doing so and thus, there is no error in the order passed by the Commissioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, though strictly speaking the onus was on the petitioner to move before the statutory authority within time, but in the peculiar facts and circumstances of the case, when rightly or wrongly he had invoked the writ jurisdiction of this Court and finally on 15.02.2019, the writ petition was dismissed as not maintainable and the petitioner having moved before the statutory forum of the Commissioner of Magadh Division in service appeal within one month thereafter, in the considered opinion of the Court, the petitioner is entitled to, at least, one forum for assailing the original order passed against him.

7. Accordingly, for securing the ends of justice and equity, the writ petition stands disposed off by setting aside the order dated 14.10.2019 passed in Service Appeal No.63 of 2019 by the Commissioner, Magadh Division, Gaya. The matter is remitted to the Commissioner for hearing the case on merits, in accordance with law. The same be done within two months from



the date of production of a copy of this order before the
Commissioner, Magadh Division.

(Ahsanuddin Amanullah, J)

J. Alam/-

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