

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1134 of 2020

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Santosh Kumar Jha, aged about 67 years, Son of Jacob Rakhal Jha, House No. 15, Spa Villa, Naya Tola, Bhikhanpur, P.S. Ishakchak, P.O.- Jagdishpur, District- Bhagalpur- 812001

... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sichai Bhawan, Patna.
2. Superintending Engineer, Keul Badua Chandan Command Area Development Circle, Combined Building Bhagalpur.
3. Executive Engineer, Keul Badua Chandan Command Area Development Division, Combined Building, Bhagalpur

... Respondents

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Appearance :

For the Petitioner : Mr.Sanjeev Shankar, Advocate
For the Respondents : Mr.Vinay Kirti Singh (GA2)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 13-11-2020

Heard learned counsel for the petitioner as well as learned counsel for the respondents through video conferencing.

2. Instant writ petition has been filed for a direction to the respondents for payment of gratuity and leave encashment amount for 330 days along with admissible interest.

3. Petitioner was initially appointed on the post of Junior Engineer on daily wage basis vide Letter No. 685 dated 1.7.1981(Annexure 1) issued by the Secretary, Kiul Badua Chandan Command Area Development Authority, Bhagalpur. However, he was regularized against the vacant post of Junior



Engineer, Chandan Pariyojna Division, Bhagalpur in the pay scale of Rs.785-25-1135-E.B.-25-1210 with effect from 26.8.1988. He was promoted to the post of Assistant Engineer in the pay scale of Rs.6500-200-10500 vide Office Order bearing Memo no. 308 dated 2.8.2001 (Annexure 3). Vide Office Order bearing Memo no. 25 dated 19.1.2007, the petitioner was promoted to the post of Executive Engineer in the pay scale of Rs.3000-4500 (Annexure 6) from which post he superannuated from the service on 31.8.2013.

4. Learned counsel for the petitioner submits that the petitioner retired from the service on 31.8.2013. Presently, he is suffering from several ailments and is in dire need of retiral benefits. He submits that in spite of several representations filed by him from 2.11.2013 to 16.10.2019, gratuity and leave encashment amount have not been paid till date.

5. Counter affidavit has been filed by respondents no. 2 and 3. In paragraph 11 of the counter affidavit, it is stated that departmental proceeding was initiated against the petitioner and he had been awarded punishment vide Office order contained in Memo No. 178 dated 16.7.2016. Pursuant to previous orders of this Court dated 21.1.2020 and 23.6.2020, respondents no. 2 and 3 have filed supplementary counter affidavit dated 2.9.2020. In



paragraph 5 of the supplementary counter affidavit, it is stated that due to inadvertence, in paragraph 11 of the counter affidavit it had wrongly been stated that since the petitioner has already superannuated on 31.8.2013, the departmental proceeding could not be initiated against him. Respondents in paragraph 6 states that the complete records of the case was found out and after due scrutiny, it was found that pursuant to the departmental direction as contained in Letter No. 685 dated 26.11.20-13 (Annexure C to the counter affidavit), the Divisional Commissioner-cum-Chairman put the concerned Assistant Engineer and Junior Engineer under suspension and directed vide Office order contained in Letter No. 265 dated 28.10.2014 to frame charges against them in Form 'Ka' and initiate departmental proceeding against them. By the said order, the Chairman directed to initiate proceeding under Rule 43(b) of the Bihar Pension Rules against the petitioner since he had already superannuated." It is further stated that in the light of the aforesaid direction, the departmental proceeding was initiated against all the concerned engineers including the petitioner vide Officer order issued by the Secretary of the Agency as contained in Memo no. 55 dated 6.2.2015 (Annexure I to the supplementary counter affidavit). Petitioner participated in the



departmental enquiry and submitted his written defence before the Inquiry Officer who submitted its Inquiry report dated 22.7.2015 (Annexure J to the supplementary counter affidavit) holding Charge No.1 partly proved and Charge No.3 fully proved against the petitioner. Thereafter, second show cause notice contained in Letter no.285 dated 15.9.2015, enclosing a copy of the enquiry report dated 22.7.2015, was issued to the petitioner which was replied by him. However, reply of the petitioner was found to be unsatisfactory by the respondents and the aforesaid charges against the petitioner stood proved. In respect of Charge No.3, as the criminal proceeding was pending against the petitioner, the Chairman of the Agency vide Order dated 30.6.2016 (Annexure K to the supplementary counter affidavit) ordered to keep in abeyance the payment of post retiral benefits of the petitioner.

6. On going through the counter affidavit as well as supplementary counter affidavit of the respondents, it appears that the petitioner's retiral benefits, i.e., gratuity and leave encashment amount, have been withheld by the respondents pursuant to order dated 30.6.2016 (contained in Annexure K to the supplementary counter affidavit) by which he has been punished. In paragraph 9 of the counter affidavit, it has been



held that the petitioner committed irregularities in execution of Scheme No. RJN-1 of KBC Command Area development Agency, Bhagalpur when he was posted as Executive Engineer of the aforesaid Division. In the said matter, Technical Examination Cell of the Vigilance Department, Bihar had made enquiry into the matter and submitted its report dated 26.7.2013 (Annexure B to the counter affidavit) holding the petitioner and the concerned engineers to be guilty. Consequent upon the aforesaid charges, departmental proceeding was initiated and following due process order dated 30.6.2016 was passed to keep the payment of retiral benefits of petitioner in abeyance.

7. From perusal of the writ petition, it appears that the petitioner has nowhere challenged the punishment order dated 30.6.2016 (Annexure K to the supplementary counter affidavit) nor has whispered about the same in the entire writ petition. Besides this, till date, the petitioner has not filed any reply to the counter affidavit as also the supplementary counter affidavit controverting the averments made by the respondents. The legality of order dated 30.6.2016 passed by respondents has not been put to challenge by the writ petitioner nor there is any prayer to that effect.



8. In that view of the matter as also in absence of any challenge to order dated 30.6.2016 (Annexure K to the supplementary counter affidavit), this Court does not find any reason to pass any positive order in the writ petition.

9. Writ petition stands disposed of with the aforesaid observations.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.11.2020.
Transmission Date	

