

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.93 of 2020**

Janardan Prasad S/o- Sri Bhagirathi Singh, Resident of Sumitam Griham
Vatica, Bailey Road, Ambedkar Path, Phulwari, Patna.

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Secretary, Rural works Department, Govt. of Bihar, Patna.
4. The Joint Secretary, Rural works Department, Govt. of Bihar, Patna.
5. The commissioner, Rural works Department, govt. of Bihar, Patna.
6. The Principal Secretary, Road Construction Department, govt. of Bihar, patna.
7. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
8. The Deputy Secretary, Road construction Department, Govt. of Bihar, Patna.
9. The Deputy Secretary (Establishment Section) Rural works Department, Govt. of Bihar.
10. The Executive Engineer, Rural works Department work Division, Benipatti (Dist- Madhubani).
11. The Executive Engineer, Rural works Department, work Division, Bayasi (Dist- Purnea).
12. The Accountant General of Bihar, Mahalekar Bhawan, Birchand Patel Path, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Rajkumar Rajesh, Advocate
For the State	:	Mr.Kumar Alok (Sc7)
For the Accountant General:		Mr. Rabindra Kr. Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 22-09-2020 Heard learned counsel for the petitioner and learned
counsel representing the State.

This writ application has been preferred by the
petitioner for issuance of a writ in the nature of writ of
Mandamus or any other appropriate writ commanding and
directing the respondents to make payments of his post retiral



dues with all consequential benefits to the petitioner together with statutory interest at the rate of 12 per cent per annum.

Petitioner retired from the post of Executive Engineer in the Department of Rural Works. It appears that while he was serving as Executive Engineer in the Work Division, Benipatti under the Rural Works Department he was charged with committing irregularity in construction of 4.4 Kms Road from Radhkant to National Highway via Dullipatti to Bhalkurwa Shailie Belly under Chief Minister Village Road Plan. A departmental proceeding was initiated against the petitioner and one FIR giving rise to Madhubani P.S. Case No.92 of 2009/ G.R. No. 1246/09 was registered against the petitioner. Petitioner superannuated from service on 30.09.2012. Since the departmental proceeding as well as criminal proceeding were pending against him he was not paid his full pension and gratuity. His 10 per cent pension, 10 per cent gratuity, second ACP promotion benefit since 2009 and leave encashment remained unpaid.

In this writ application, thus, the petitioner was looking for these reliefs.

In the counter affidavit respondent nos. 1 to 5 have made a statement that in the departmental proceeding the



petitioner was exonerated vide notification no. 2487 dated 29.06.2015. As regards second ACP promotion the same was required to be considered by the Road Construction Department which is the parent Department of the petitioner and the same was communicated by the Rural works Department to the Road Construction Department, Bihar.

In the counter affidavit filed by respondent no. 6, 7 and 8 a statement has been made that vide departmental letter no. 1169 (s) dated 12.02.2020 necessary sanction order for making payment of balance 10 per cent pension and gratuity has been issued and the same stands communicated to the Accountant General Bihar. Similarly the leave encashment amount for 276 days leave has been sanctioned as regards second MACP with effect from 01.01.2009 the same was under active consideration of the Department and it was waiting for a meeting of the Departmental Screening Committee.

Taking note of the aforesaid averments made in the counter affidavit of respondent nos. 6, 7 and 8, this Court called upon the said respondents to take decision with regard to payment of MACP to the petitioner. The respondent nos. 6, 7 and 8 thereafter convened a meeting and came with a decision that the petitioner is entitled for second MACP with effect from



01.01.2009 and accordingly the same has been recommended.

Learned counsel for the petitioner has on instruction submitted that so far as grievance of the petitioner with respect to 10 per cent of the pension, 10 per cent of gratuity and leave encashment are concerned, those have been redressed but no interest has been paid on the delayed payment. Learned counsel has, thus, prayed for awarding appropriate interest on this amount as according to him once the petitioner has been exonerated in the departmental proceeding on 29.06.2015, the department should have paid the outstanding amount.

As regards the second MACP, learned counsel for the petitioner submits that in case of similarly situated employees the department has provided the revised pay scale of Rs.37,400-67,000/- and a grade pay of Rs.8700/- for second financial upgradation which has not been provided to the petitioner. In this regard the petitioner has placed on record with his rejoinder a photocopy of Circular No. 2120 (s) dated 25.06.1985 as Annexure '6'. In this connection he has also mentioned the name of Qaisar Rashid and Vishun Deo Mahto who have been given the benefit in the aforesaid pay scale vide Annexure '7' to the rejoinder.

Learned counsel submits that in this regard no specific



prayer has been made in the writ application because this benefit has been given to the petitioner during pendency of the writ application and, therefore, the grievance of the petitioner in this respect must be considered.

Learned counsel representing the State has opposed the prayer of the petitioner for awarding of interest.

In this connection attention of this Court has been drawn towards statements made in paragraph '14' of the writ application wherein petitioner has himself stated that he was discharged in criminal case by the learned Sub-Divisional Judicial Magistrate, Madhubani vide order dated 31.05.2019. It is submitted that since criminal proceeding was pending against the petitioner, in terms of the provision contained in the Bihar Pension Rules, 10 per cent of the pension and 10 per cent of gratuity amount remained withheld. It is submitted that there is no inaction on the part of the authorities of the State once the petitioner was discharged from the criminal proceeding steps were taken to pay the admissible amount and in the facts of the present case no interest could be awarded.

As regards the claim of the petitioner to give him similar benefits online with the names mentioned in the rejoinder such as Qaisar Rashid and Vishun Deo Mahto learned



counsel for the State submits that they were senior to the petitioner and as such the grievance of the petitioner is not correct.

Having heard learned counsel for the petitioner and the State, this Court agrees with the submission of learned counsel for the State that in the facts of the present case the petitioner would not be entitled to get any interest for payment made to him on account of balance 10 per cent pension, 10 per cent gratuity as also the second MACP. The pleadings in the counter affidavit have satisfied this Court that there is no inaction on the part of the State authority and those payments remained withheld for cogent and plausible reasons.

As regards the grievance of the petitioner with respect to the pay scale of Rs.37,400-67,000/- plus grade pay of Rs.8700/- this Court is of the considered opinion that the petitioner may raise his grievance in this respect before the Principle Secretary Road Construction Department, Government of Bihar (respondent no. 6) within a period of eight weeks from today. If such claim is raised/representation is made before respondent no. 6 within the aforesaid period he will consider the same and shall pass a reasoned order thereon within a period of three months from the date of receipt of the claim/representation of the petitioner.

In case the petitioner is found entitled for his claim



the same will be allowed and the difference, if any, in this regard will be paid to the petitioner within one month thereafter. In case, however, the claim of the petitioner is not justified and is not found payable, the reasons thereof shall be communicated to the petitioner within the aforesaid period of three months.

This application stands disposed of.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

