

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.72 of 2021

In

Civil Writ Jurisdiction Case No.3968 of 2020

=====

Hari Kishore Sinha, son of late Ram Prasad Sinha, resident of Village-Basbitta, P.S.- Majorganj, District- Stiamarhi, at present residing at Mohalla-Rajivnagar Road No. 5, P.S. Rajivnagar, District- Patna.

... .. Appellant/s

Versus

1. The State of the Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Shahabuddin Azeem @ S. Azeem, Advocate
For the Respondent/s : Mr. S. D. Yadav, AAG 9

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-09-2021

I.A. No.1 of 2021:

Heard.

This interlocutory application has been filed by the appellant for condoning the delay of 25 days in preferring the present LPA.

For the reasons, as stated in aforesaid interlocutory

application, the delay in preferring the present LPA is condoned.

I.A. No. 1 of 2021 stands allowed.

LPA No.72 of 2021:

Heard learned counsel for the parties.

Being aggrieved by judgement and order dated 24.06.2020 passed in C.W.J.C. No.3968 of 2020 passed by learned Single Judge of this Hon'ble Court, appellant has preferred this L.P.A.

Appellant has preferred this LPA against that part of judgment and order by which learned Single Judge has directed payment of interest on part of retiral dues from the date of filing of writ petition instead of date of retirement of appellant.

Appellant had filed the writ petition for direction to the respondent authorities for payment of post retiral dues along with statutory and penal interest which was not paid to the appellant after retirement on 31.12.2014 from the post of Assistant Engineer, Road Construction Department.

Appellant was proceeded departmentally as well as FIR was instituted against him as he was caught red-handed by the vigilance sleuths accepting bribe of Rs.3,000/- and initially, the inquiry officer found that as the charges in departmental proceeding and criminal proceeding are identical, as such,

departmental proceeding should be kept under abeyance till conclusion of criminal trial, however, disciplinary authority did not agree and asked inquiry officer to submit inquiry report and, thereafter, inquiry report was submitted in which charges were found proved against the appellant and disciplinary authority passed an order of dismissal dated 20.5.2014 against the appellant and review filed by appellant was also dismissed by order dated 14.11.2014 against which appellant preferred CWJC No.961 of 2015 which was allowed by learned Single Judge by order dated 16.04.2018 and dismissal order was set aside with liberty to the department to proceed afresh in accordance with law.

Due to non-compliance of writ order, appellant preferred contempt case being MJC No.2959 of 2018 which was disposed of by order dated 16.08.2019 of as there was substantial compliance of the order of writ court, as referred above, by initiating a fresh departmental proceeding as well as payment of dues and since appellant had already retired, proceedings were converted under Section 43(b) of Bihar Pension Rules.

The learned Single Judge disposed of writ petition with following observation and direction:-

“X X X X X X X

Learned counsel for petitioner

submits that the respondents have not paid the retiral benefits of the petitioner i.e. pension, gratuity, leave encashment and rest dues over arrears of salary including other consequential benefits in terms of order passed in C.W.J.C. No.961 of 2015. Although this Court has granted liberty to start fresh proceeding after observing the procedure prescribed in law. The Court clarified that the petitioner would be entitled to consequential benefits on quashing of order of punishment.

The petitioner retired on 31.12.2014 after attaining the age of superannuation and, as such, the respondents are under obligation to take recourse of Bihar Pension Rules, as after retirement of an employee, the respondents have no jurisdiction to proceed against the retired employee (petitioner) except by following the procedure i.e. Bihar Pension Rule. The scheme of Bihar Pension Rules are very clear. Rule 43(a) and 43(b) of Bihar Pension Rules deals with the right of the employer to forfeit the pension.

It is true that pension includes gratuity whereas as the other benefits, like leave encashment, Group Insurance, Provident Fund is not defined as a part of the pension.

Considering the fact that the entire exercise was carried out by the respondents without following the procedure of Bihar Pension Rules, the writ application is disposed of with a direction to the respondents to pay GPF, Group Insurance, Leave Encashment and also ensure payment of the admissible dues in terms of the order dated 16.04.2018 passed in C.W.J.C. No.961 of 2015, if not already paid to the petitioner, within a period of four months from the date of receipt/production of a copy of this order along with calculation chart, failing which the petitioner shall be entitled to 9% interest on all post-retiral dues from the date of filing of the writ application i.e. 19.02.2020 till the date of actual payment.

With the aforesaid, the writ application stands disposed of.”

This Court does not find any error or infirmity in the order passed by the learned Single Judge requiring any interference by this Court.

The LPA is, accordingly, dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2021
Transmission Date	NA