

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11965 of 2019

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Bal Krishna Pandey son of Late Gopal Pandey Resident of Main Road,
Shastri Nagar, Police Station- Jehanabad, District- Jehanabad.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Deptt, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Additional Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Road Construction Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Road Construction Department, Magadh Road, Circle, Gaya.
6. The Executive Engineer, Road Construction Department, Magadh Road, Circle, Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar,Advocate
Mr.Chandra Kishore Kumar,Advocate
For the Respondent/s : Mr.Balram Kapri, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 13-01-2021 This writ application has been preferred for the following

reliefs:-

“(i) For issuance of writ of mandamus for the direction to the respondents to pay post retiral dues like leave encashment Rs.5,24,000/- and other dues which has not been paid after the retirement of the petitioner till date.

(ii) For issuance of writ of certiorari for quashing the order dated 23.06.2017 contained in Memo No. 910 dated 23.06.2017 issued under the Signature of Superintending Engineer, Magadh Road Circle, Gaya, whereby & whereunder petitioner has been awarded punishment as follows:-

(a) withhold of one increment with cumulative effect.



- (b) Recovery of excess amount paid to the petitioner from his salary/post retirement benefit after superannuation.
- (iii) For quashing of the letter dated 05.06.2018 issued under Signature of the Superintending Engineer, Road Construction, Deptt., Gaya by which he directed the Executive Engineer, Jehanabad, Road Division-I Road Construction Department to take necessary action for the recovery of the excess amount paid to the petitioner.
- (iv) For other reliefs in the facts and circumstances of the case.”

Earlier when this case was taken up for consideration on 16.06.2020, learned counsel for the petitioner prayed for an adjournment on the ground that the brief of the case is lying in the Bar Chambers.

Again on 24.08.2020, when the matter was taken up, the case was adjourned for 23.11.2020. In the meantime the Bar Chambers were opened on specific dates for taking out the briefs, if any, lying in the Chambers.

Now the Court has opened through physical hearing. Today for no rhyme or reason shown to this Court again a prayer for pass over is being made. The prayer is refused.

Mr. Balram Kapri, learned AC to SC-26 is representing the State.

Learned counsel submits that in fact against the impugned order the petitioner has preferred an appeal before the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department and this is an admitted fact on the records.



Learned counsel, therefore, submits that instead of keeping the writ application pending here, an appropriate order may be passed for disposal of the said appeal within a reasonable period. It is also pointed out that earlier by an interim order dated 14.10.2019, this Court has directed the respondents not to make any further recovery of the excess payment made to the petitioner till the disposal of the writ application and such order may continue till disposal of the appeal.

Learned counsel submits that the appeal is pending for more than three years, therefore, while issuing any such direction to dispose of the appeal, this Court may protect the interest of the petitioner as well.

Having heard learned counsel for the petitioner and learned AC to SC-26, this Court finds that admittedly the petitioner has preferred an appeal on 22.07.2017 but the said appeal is still pending with the appellate authority. The reasons for keeping the appeal pending for all these years are not disclosed.

In these circumstances, this Court directs the appellate authority (respondent no. 3) or any such authority with whom such power is vested to consider the appeal preferred by the petitioner in accordance with law and pass a reasoned order thereon considering each and every ground of appeal within a period of three months from the date of receipt/production of a copy of this order.

Since the appeal preferred by the petitioner has remained



pending so far, this Court further directs that till disposal of the appeal and communication of the order to the petitioner, the respondent shall not recover any amount in terms of the impugned order dated 23.06.2017 (Annexure '5' to the writ application).

It is made clear that this Court has not gone into the merit of the case and it will be open for the petitioner to take all such pleas which are available to him before the appellate authority.

If so advised, the petitioner may strengthen his grounds of appeal by filing appropriate supplementary petition before the appellate authority within two weeks from today.

This writ 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'.

