

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1262 of 2019

In
Civil Writ Jurisdiction Case No.10754 of 2018

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
 3. The Engineer-in- Chief-cum- Additional Commissioner-cum- Special Secretary, Building Construction Department, Government of Bihar, Patna.
 4. The Additional Secretary, Building Construction Department, Government of Bihar, Patna.
 5. The Treasury Officer, Bishweshwaraiya Bhawan, Bailey Road, Patna.

... .. Appellant/s

Versus

1. Akhilesh Kumar Sharma Son of Late Kedar Nath Sharma Resident of Village- Gorhna, P.O.- Neora, P.S.- Bihta, District- Patna, presently residing at Flat No. 405, Surya Laxmi Vila Apartment, Ram Jaipal Path, Bailey Road, P.O.- Danapur, P.S.- Rupaspur, District- Patna, the retired Executive Engineer, Building Construction Department, Government of Bihar, Patna.
2. The Accountant General, Bihar, Patna.
3. The Assistant Accountant General Office of the Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Dinesh Maharaj (Ac To Aag 11)
For the Respondent/s	:	Mr.Shashi Bhushan Kumar Manglam Adv. Mr. Awnish Kumar Adv. Mrs. Aradhna Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 12-12-2022

In the instant appeal, State have assailed the order of
the learned Single Judge dated 14.05.2019 by which



respondent's C.W.J.C No. 10754 of 2018 is allowed.

2. Brief facts of the case are that the respondent while working as an Executive Engineer, his residential premises was stated to have been raided with an intention to have a trap proceedings while alleged to have demanded and accepted illegal gratification a sum of Rs. 18,500/- on 17.03.2007.

3. Arising out of aforementioned incident respondent was subjected to parallel proceedings like disciplinary and criminal proceedings. Insofar as criminal proceedings is concerned it is yet to attain finality. On the other hand, in the disciplinary proceedings charges were framed on 26.10.2007, the inquiring officer had submitted report holding that the charges levelled against the respondent was proved on 25.04.2014. On receipt of inquiring officer's report, the disciplinary authority proceeded to issue a second show cause notice on 09.05.2014 and proceeded to impose the penalty of dismissal from service on 11.11.2014.

4. Feeling aggrieved and dissatisfied with the order of dismissal, respondent invoke remedy under Article 226 in filing C.W.J.C No. 2015 of 2015 and it was allowed in his favour on 06.02.2017 while remanding the matter to the disciplinary authority.



5. Extract of the order dated 06.02.2017 reads as under:-

“It is made clear that a failure on the part of the State Government to take decision to continue the proceeding against the petitioner as well as to pass a final order within a period of 6 months from the date of receipt/production of a copy of this order for reasons not attributable to the petitioner, would result in revocation of this liberty.

The writ petition is allowed with the liberty aforementioned.”

6. The appellant-State converted the disciplinary proceedings under Bihar CCA Rules, 2005 to that of Rule 43(b) of Bihar Pension Rules, 1950 on 15.05.2017 and proceeded to impose the penalty of 100% reduction of pension on 03.08.2018. In the meanwhile, the State-appellant filed M.J.C No. 2863 of 2017 seeking extension of time limit pursuant to the order dated 06.02.2017. However, it was withdrawn by the State-appellant on 16.05.2018.

7. In this backdrop, respondent had filed C.W.J.C No. 10754 of 2018 along with M.J.C No. 940 of 2019. The respondent had assailed the order dated 03.08.2018. Learned Single Judge allowed the respondent's C.W.J.C No. 10754 of 2018 on 14.05.2019 with reference to earlier order was passed on 06.02.2017 and it was a conditional order. Hence, the present



appeal by the State.

8. Learned counsel for the appellant vehemently contended that impugned order dated 03.08.2018 is passed after 6 months and 22 days. It is also submitted that it is a serious charge levelled against the respondent insofar as alleged demand and acceptance of illegal gratification. Therefore, this Court cannot proceed to decide in favour of the respondent on technicality.

9. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that as long as order dated 06.02.2017 is not modified by the learned Single Judge or modified by the next higher forum. Both respondent and appellant-State are bound by the order dated 06.02.2017.

10. In other words, among the parities, it has attained finality on 06.02.2017. Further, it is submitted that for extension of time State-appellant have preferred M.J.C No. 2863 of 2017 and the same has been withdrawn on 16.05.2018.

11. In the light of the fact that M.J.C has been filed to seek extension of time, that suffice that the disciplinary authority is well aware that proceedings dated 03.08.2018 is beyond the time limit stipulated in the order dated 06.02.2017 passed in C.W.J.C No. 2015 of 2015.



12. Heard learned counsel for the respective parties.

13. Core issue involved in the present *lis* is whether passing of final order in a disciplinary proceedings dated 03.08.2018 is in accordance with the order dated 06.02.2017 passed in C.W.J.C No. 2015 of 2015 or not? The appellant-State filed M.J.C No. 2863 of 2017 in seeking extension of time and they have withdrawn. Therefore, one has to draw inference that order dated 06.02.2017 passed in C.W.J.C No. 2015 of 2015 has attained finality.

14. In other words, State is bound to pass order in a disciplinary proceedings initiated against respondent in terms of the order dated 06.02.2017 within 6 months from the date of receipt/production of a copy of the order dated 06.02.2017. State have not apprised this Court as to on what date they are in receipt of the order dated 06.02.2017 or whether respondent/State counsel has produced a copy of the order dated 06.02.2017 before the disciplinary authority so as to calculate whether 6 months is from the date of receipt of the order or production of copy of the order dated 06.02.2017. In fact there is a delay more than the stipulated time for the reasons that State-appellant would not have filed M.J.C No. 2863 of 2017 seeking extension of time. Therefore, one has to draw inference



that order dated 03.08.2018 imposition of penalty of 100% reduction in pension is contrary to order dated 06.02.2017.

15. In the light of these facts and circumstances, appellants have not made out a case so as to interfere with the order of the learned Single Judge dated 14.05.2019 passed in C.W.J.C No. 10754 of 2018.

16. Accordingly, present appeal stands dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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