

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.186 of 2021

In
Civil Writ Jurisdiction Case No.3968 of 2020

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Road Construction Department, Govt. of Bihar, patna
 3. The Engineer in Chief Road Construction Department, Govt. of Bihar, Patna

... .. Appellant/s

Versus

Hari Kishore Sinha

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subodh Kumar (Ac To Sc 26)
For the Respondent/s	:	Mr. Shahabuddin Azeem @ S. Azeem, Adv. Mr. Akshay Lal Pandit, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-02-2023

Re: Interlocutory Application No. 02/2021.

The present Interlocutory Application has been filed for condoning the delay of 222 days in preferring the instant memo of appeal.

For the reasons mentioned in the Interlocutory Application, the delay of 222 days is condoned.

The Interlocutory Application No. 02/2021 stands allowed.



L.P.A. No. 186/ 2021

Heard Mr. Subodh Kumar, the learned Advocate for the appellant/State and Mr. Shahabuddin Azeem, the learned Advocate for the sole respondent.

The respondent was proceeded against departmentally on the charge of his having accepted a bribe of Rs. 3,000/- from some contractor while he was posted as an Assistant Engineer. The respondent had been caught in flagrante delicto. However, for the reason of the proceeding not having been carried out in accordance with the provisions prescribed under Bihar C.C.A. Rules, the proceedings were quashed by a Bench of this Court vide order dated 16.04.2018 passed in C.W.J.C. No. 961 of 2015.

While quashing the entire departmental proceeding and consequent order of termination, the respondent was held to be entitled to all the consequential benefits. However, the Bench permitted the State to initiate a fresh proceedings against the respondent after observing the procedure prescribed under law, in case so



deemed necessary.

It appears from the pleadings in the appeal that a proceeding under Section 43 (B) of the Bihar Pension Rules was initiated against the respondent. However, in the meantime, for the non-compliance of the order dated 16.04.2018 passed in C.W.J.C. No. 961 of 2015, referred to above, the respondent preferred a contempt petition vide M.J.C. No. 2959 of 2018 which was disposed of on 16.08.2019 as the Court was made to understand that there was substantial compliance of the order. However, the respondent was given the liberty to assail the order passed by the authority in an appropriate proceeding.

Thereafter, the respondent again approached this Court vide C.W.J.C. No. 3968 of 2020, armed with the order passed in the M.J.C. No. 2959 of 2018, claiming that he has not been paid his retiral benefits i.e. pension, gratuity, leave encashment and other dues which had been directed to be paid to him as a consequence of the quashing of the entire departmental proceeding as also the order of termination of the respondent.



The Bench, in this instance, vide order dated 24.06.2020 recorded that the respondent had retired on 31.12.2014 and that any proceedings against him, notwithstanding the leave given by the Bench in C.W.J.C. No. 961 of 2015 to start a fresh proceeding against the respondent, could be carried out only in consonance with the provisions contained in Rule 43(B) of the Bihar Pension Rules and not otherwise. However, the Bench vide order dated 24.06.2020, referred to the above, concluded that the respondent be paid GPF, group insurance, leave encashment and all other dues which are admissible to him, if already not paid, within a fixed period of four months, failing which, the respondent would be entitled to recover 9% interests 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.

This did not satisfy the respondent and on the limited issue of the desirability of getting interest on the retiral dues, from the date of retirement and not from the date of filing of the writ petition as directed by the learned



Single Judge, an appeal was filed by the respondent vide L.P.A. No. 72 of 2021, which was dismissed vide order dated 09.09.2021.

Mr. Subodh Kumar, the learned Advocate for the appellant has stated that because of such orders, except the leave encashment, the respondent has been paid 90% of the gratuity amount and is being paid provisional pension to the extent of 90% and other retiral dues.

The reason for preferring this appeal is that at all stages, the respondents did not intimate the Courts that the proceeding under Rule 43(B) of the Bihar Pension Rules was pending. Such orders by the Courts appear to have been passed without calling for an affidavit in response to the petitions filed by the respondent.

Since, every other amount due to the appellant, except leave encashment has been paid to the respondent, we rest this appeal with a direction to conclude the proceeding initiated against the respondent as expeditiously as possible, preferably within a period of four months.



Till the conclusion of the proceedings, nothing shall be payable to the respondent and any decision with respect to payment or recovery from the respondent, if any, would be subject to the result of the proceedings pending against the respondent under Rule 43 (B) of the Bihar Pension Rules.

The appeal stands allowed and disposed of to the extent indicated above.

(Ashutosh Kumar, J)

shivank/sunil-

(Harish Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

