

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5490 of 2023

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Ashok Kumar Singh S/o Thakur Prasad Singh, Resident of Jhandapur, Near School, P.S. - Bihpur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Road Construction Department, Bihar, Patna.
2. The Engineer-in-Chief, Road Construction Department, Bihar, Patna.
3. The Deputy Secretary, Road Construction Department, Bihar, Patna.
4. The Executive Engineer Works Division, 1, Local Area Engineering Organization, Muzaffarpur.
5. The Treasury Officer, Bhagalpur.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Fakhruddin Ali Ahmad, Advocate
For the State	:	Mr. Amit Prakash (GA-13)
For the A.G.	:	Ms. Ritika Rani, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-09-2023

Heard Mr. Fakhruddin Ali Ahmad, learned counsel appearing on behalf of the petitioner, Mr. Amit Prakash, learned GA-13 appearing on behalf of the State and Ms. Ritika Rani, learned counsel for the Accountant General, Bihar.

2. Learned counsel appearing on behalf of the State informs this Court that during the pendency of the present writ petition, the Executive Engineer has informed him that the records were perused for payment of leave encashment to the petitioner but it was found that just before the retirement, petitioner had released huge amount which was not required to



be paid to a private company and seeks to file supplementary counter affidavit bringing on record the said report.

3. Learned counsel for the petitioner submitted that earned leave for 300 days has not yet been paid to the petitioner. He further submitted that respondents no. 2 to 4 in their counter affidavit have admitted that the Accountant General, Bihar, Patna had issued necessary letter of pension, gratuity and commuted value of pension vide P.P.O. No. 202211201227. It is also admitted by the respondents that due to non availability of 'No Dues Certificate', the concerned Treasury Officer has not made payment of pensionary benefits to the petitioner and that the Deputy Secretary (M.C) Road Construction Department, Government of Bihar vide his letter no. 1892 (S) dated 31.03.2023 has already issued 'No Dues Certificate' in favour of petitioner and communicated the same to the Treasury Officer, Bhagalpur (Annexure-R/1).

4. Learned counsel further submitted that for the confirmation of letter no. 1892 (S) dated 31.03.2023, the Senior Secretary, Bhagalpur, vide his letter no. 541 dated 08.04.2023 sent a letter to the Deputy Secretary (M.C) Road Construction Department, Government of Bihar and the same was confirmed by letter no. 2403 (S) dated 28.04.2023 and the communication



was sent back to the Treasury Officer, Bhagalpur.

5. Learned counsel further submitted that no show cause was issued to the petitioner nor any *ex-parte* inquiry was made for the alleged misappropriation of fund. Leave encashment cannot be withheld by the authority in absence of any proceeding initiated during the service period of the petitioner or in accordance with Rule 43 of the Bihar Pension Rules, 1950. The petitioner has relied upon a judgement passed by this *Hon'ble Court in Saket Bihari Sharma vs. State of Bihar & Ors [2013(2) PLJR 596]*. The relevant paragraph is reproduced hereinbelow:

“7. I may further note that if by Rule 184 of the Bihar Service Code, the entitlement is there then merely by a letter of the Deputy Secretary, the entitlement can not be taken away for that would be amending the Code which has statutory force. Bihar Service Code, 1952 is a Code relatable to Article 309 of the Constitution. It could only be amended by the State Government. It can at best be clarified by Government instructions but, by no means, it can be amended by instructions.”

6. Considering the rival submissions made on behalf of the parties, the Additional Chief Secretary, Road Construction Department, Government of Bihar, is directed to call for the service records relating to the petitioner and after providing opportunity of hearing to the petitioner pass a



reasoned order considering the fact that no proceeding is pending against the petitioner nor any criminal case was lodged during the service period of the petitioner.

7. All the above exercise is directed to be concluded within a period of six weeks from the date of communication of this order.

8. With above observations and directions, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/Nilmani

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	19.09.2023
Transmission Date	N/A

