

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22011 of 2013

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Bhushan Prasad Singh Son Of Late Ram Balak Singh Resident Of Village - Ishakpur, P.O.
P.S. Mahnar, District - Vaishali Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner - Cum - Secretary, Minor Water Resource Department, Govt. Of Bihar, Patna
3. The Joint Secretary, Minor Water Resource, Deptt. Govt. Of Bihar, Patna
4. The Chief Engineer North Minor Water Resource Deptt., Muzaffarpur Bihar
5. The Executive Engineer Minor Irrigation Division Hazipur, Vaishali Bihar
6. The Superintending Engineer - Cum - Enquiry Officer Minor Irrigation Circle, Darbhanga Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dileep Kumar Jha, Adv. Mr. Manmohan Kumar, Adv.
For the State	:	Mr. Sita Ram Yadav, GP 16 Mr. Rakesh Kumar Srivastava, AC to GP 16
For the A.G.	:	Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 07-02-2023

1. The petitioner by way of this writ petition assails the order dated 06.10.2012, whereby the dismissal order dated 02.04.2007 was set aside and the salary apart from subsistence allowance was forfeited till the date of retirement.
2. The petitioner prays for grant of full salary for the period spent during suspension and retiral benefits.
3. Brief facts which need to be noticed are that the petitioner was appointed as a Pump Operator and while serving at Minor Irrigation Division No. 2, Hazipur he was placed under



suspension on 4th January 2007. Departmental proceedings were initiated and he was dismissed from service vide order dated 26.02.2007. This Court in C.W.J.C. No. 8609/2007 quashed the enquiry proceedings holding that the same to be vitiated in law and vide its judgment dated 16.03.2012, directed the Chief Engineer to conduct an enquiry afresh within a period of three months and dispose of the matter in light of the enquiry report.

4. In compliance of the judgement, fresh enquiry was initiated by the enquiry officer found charges partially proved holding that that the petitioner's conduct was not in accordance model code of conduct. Punishment of forfeiting salary apart from subsistence allowance for the suspension period up to the date of superannuation dated 30th November 2010 was passed. Further, the period of service was to be counted for the purpose of pension.

The petitioner has in its Supplementary Affidavit stated that he was not supplied copy of the enquiry report, nor he was given any opportunity of hearing before passing the impugned order dated 06.10.2012.

5. Learned counsel appearing for the respondent states that no punishment has been passed against the petitioner and the



dismissal order has also been set aside and therefore, no cause of action arises to file the present petition as the period of suspension has also been counted for the purpose of pension. The salary for the suspension period apart from subsistence allowance has been forfeited in view of the fact that the petitioner has been found to be partly guilty of not following model code of conduct.

6. I have considered the submissions. This Court directed the Chief Engineer to dispose of the matter in the light of the enquiry report within a period of three months. Keeping in view thereto, the Chief Engineer has passed the order, the petitioner would therefore be treated to have been reinstated in service and would have continuity of service. Once the Chief Engineer reached to the conclusion that no case for dismissal is made out, the petitioner would be entitled to the full salary for the subsistence allowance in terms of the **Rule 97(b)** of the **Bihar Service Board** as also in terms of the **Rule 10 of C.C.A. Rules of 2005** and the order passed by the Chief Engineer to that extent is found to be erroneous more so as no other punishment has been ordered by the Chief Engineer.

7. Accordingly, it is directed that the respondents shall make refixation of his salary from 2007 onwards and that is from the



date the petitioner was dismissed from service and pay him all arrears of salary up to the date he attained superannuation that is 30th November 2010. He would also be entitled for fixation of his pension accordingly and all other retiral benefits shall also be paid to him including gratuity and other retiral benefits. The arrears of pension and retiral benefits will carry an interest at the rate of 9%. The entire exercise for above shall be concluded within a period of three months.

8. The writ petition stands allowed accordingly. No cost.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 35

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

