

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6631 of 2023**

Sulendra Sahu S/o Singheshwar Sahu, Resident of Village-Bank, P.O.-Bank via Lakhminia Bazar, P.S.-Dandar, District-Begusarai, PIN-851211, presently residing at Ward No.-40, Near Umargarh High School, Dak Bungla Road, P.O.-Mirzapur Banduar, P.S.-Town Thana, Begusarai-851129.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary/Secretary, Public Health Engineering Department, Vishwasaraia Bhawan, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Vishwasaraia Bhawan, Patna.
4. The Chief Engineer, P.H.E.D., Muzaffarpur Zone, Muzaffarpur.
5. The Executive Engineer, P.H.E.D. Division Darbhanga, District-Darbhanga.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Kumod Kumar Shrivastaw, Advocate  
For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**

**Date : 18-08-2023**

Heard Mr. Kumod Kumar Shrivastaw, learned  
counsel appearing on behalf of the petitioner and Mr. Arvind  
Ujjwal, learned SC 4 for the State.

2. The present writ petition under consideration has been  
filed for following relief(s) :-

- “(a) For a direction to the respondents to pay 10% pension and full amount of gratuity (90% of pension is being paid) to the petitioner, which has been wrongly withheld by the respondent with reasonable amount of interest and cost over the payable amount.
- (b) For a direction to the respondents to pay to the petitioner the encashment amount of earn leave with reasonable amount of interest and cost over



the payable amount which was also not paid illegally and arbitrarily.

- (c) For a direction to the respondents to give third ACP to the petitioner to which he was entitled in 13.08.2012 but it has been illegally withheld by the respondents till date.
- (d) For issuance of any other writ/writs, direction/directions, order/orders, in the ends of justice to which the petitioner is entitled.”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on the post of Junior Engineer on 13.08.1982 and retired on 31.01.2016. The petitioner was posted as Junior Engineer (Estimator) in Public Health Engineering Department, Samastipur Division and he was transferred from Samastipur to Public Health Division, Darbhanga on 10.08.2010, where he joined on 17.08.2010 and remained posted there on the said post till the date of his retirement i.e. 31.01.2016.

4. Petitioner is aggrieved for non-payment of retiral dues including 10% pension and full gratuity. He has also claimed for the third ACP.

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has unblemished service record. After two years of retirement of the petitioner, he was served with charge memo as contained in letter no.371 dated 27.04.2018. The petitioner furnished his detail reply to the same. The Disciplinary



Authority was appointed and the inquiry was held with respect to the charges framed against the petitioner but the charges were not proved against the petitioner. Thereafter, the Disciplinary Authority differing with the Enquiry Officer had issued second show cause and the petitioner had filed reply to the second show cause, however, till date the disciplinary proceeding is still pending.

6. Learned counsel for the petitioner has relied on the *judgment dated 01.11.2021* of this Court passed in the case of *Sudhir Kumar Sinha Vs. The State of Bihar & Ors.* bearing *CWJC NO.3824 of 2021*.

7. On these grounds, the learned counsel submitted that the action of the respondent authorities in withholding of 10% pension and full amount of gratuity as well as not making payment of retiral dues and other consequential benefits to the petitioner is not sustainable in the light of judgment passed by this Court in the case of *Sudhir Kumar Sinha Vs. The State of Bihar & Ors.* (supra).

8. Learned counsel for the petitioner has emphatically stated that initiation of the departmental proceeding against the petitioner is against the provisions of law after the petitioner had retired on 31.01.2016 and he was served with the charge memo on



23.03.2018 against the allegation of misappropriation of fund, which had taken place in the financial year, 2008-09, as such the action taken after retirement of more than nine years of an employee and denial of payment of full pension and other retiral dues is not in accordance with law laid down by this Hon'ble Court and the Hon'ble Apex Court.

10. Learner counsel for the petitioner submitted that as the matter is pending before the disciplinary authority for final adjudication, petitioner wants to file a detail representation before the concerned authority for redressal of his grievance in accordance with law laid down by this Hon'ble Court and the Hon'ble Apex Court.

11. Learned counsel further submitted that as admittedly in the present case, the allegation is relating to the financial year, 2008-09, much prior to the joining of the petitioner, as such any loss caused to the Government can not be attributable to the petitioner.

12. Learned counsel further submitted that the Controlling Officer of the petitioner in the garb of saving some other employees with *mala fide* intention proceeded against the petitioner whereas the Contractor is solely responsible for not carrying out the work, in terms of the agreement entered into by



the erstwhile Officer, during whose period the work had to be carried out.

13. Learned counsel appearing on behalf of the State submitted that the writ petition is premature as the departmental proceeding is pending before the Disciplinary Authority and instead of participating in the departmental proceeding, the petitioner has filed the present writ petition. He further submitted that he has received instruction that the disciplinary proceeding is likely to be concluded within a very small span of time. He, however, has not denied that the petitioner has already filed his representation as contained in Annexure - '7' of the writ petition but the same has not been disposed of by the respondents till date.

15. Having considered the rival submissions made on behalf of the parties, the facts which have arose from the pleadings made in the writ petition and the records, which were brought by way of several annexures to the writ petition, the alleged defalcation relates to the year, 2008-09, whereas the petitioner had joined in Public Health Division, Darbhanga on the post of Junior Engineer on 17.08.2010 and till the date of his retirement on 31.01.2016, the department was not aware of any misappropriation or non-execution of work by the Contractor as per the agreement entered into by the erstwhile Officer. As such the petitioner can not



be held liable for any misappropriation of fund for the work, which did not relate during the posting of the petitioner. The petitioner has been denied 10 % of pension and full amount of gratuity on the said ground. Rule 'D' in Rule 43 of the Bihar Pension Rules, 1950 was inserted in the year, 2019, therefore, withholding of full amount of gratuity is illegal. This Court holds that the action taken against the petitioner is not sustainable in the eye of law, however, considering the submissions made on behalf of the petitioner that the petitioner has already filed representation before the respondent no.3 (the Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Vishwasaraia Bhawan, Patna), the respondent no.3 is directed to consider the records relating to the petitioner as well as the fact that in the present case, the allegation, which has been levelled against the petitioner *prima facie* is of financial year, 2008-09. No evidence has been produced along with the charge memo including the copy of audit report for the concerned period for which the petitioner has been proceeded in the departmental proceeding. The petitioner, if so advised, may file a detail representation before the respondent no.3 (the Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Vishwasaraia Bhawan, Patna) and the respondent no.3 is directed to pass a reasoned order in accordance with law on the basis of different circulars of the State



Government and in accordance with the provisions of the Bihar Pension Rules, 1950 and the law laid down by the Hon’ble Apex Court and this Hon’ble Court. The representation of the petitioner may preferably be disposed of within a period of eight weeks from the date of this order taking into consideration the fact that due to the pending of the departmental proceeding, the retiral benefits of the petitioner has been denied. In case the petitioner intends to defend his case through his representative or in person, the same may be provided to him or in case, the respondent no.3 (the Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Vishwasaraia Bhawan, Patna) finds it proper to adjudicate the matter in the presence of the petitioner, the respondent no.3 may issue a notice to the petitioner informing him that he shall be present on the date fixed.

16. With the above observation/direction, the present writ petition is disposed of.

17. There will be no order as to costs.

**(Purnendu Singh, J)**

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