

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.693 of 2008

1. Manju Kumari, aged about 51 years, wife of Late Raghvendra Kumar Sinha, Resident of Mohalla – Chitragupta Colony, Opposite Jamui Paudhasala (Nursery), P.O. and P.S. Jamui, District – Jamui.

2. Amit Kumar, aged about 24 years, son of Late Raghvendra Kumar Sinha. Resident of Mohalla – Chitragupta Colony, Opposite Jamui Paudhasala (Nursery), P.O. and P.S. Jamui, District – Jamui.

3. Alisha, aged about 22 years, daughter of Late Raghvendra Kumar Sinha, Resident of Mohalla – Chitragupta Colony, Opposite Jamui Paudhasala (Nursery), P.O. and P.S. Jamui, District – Jamui.

4. Ashish Kumar aged about 19 years, Son of Late Raghvendra Kumar Sinha, Resident of Mohalla – Chitragupta Colony, Opposite Jamui Paudhasala (Nursery), P.O. and P.S. Jamui, District – Jamui.

... .. Petitioner/s

Versus

1. The Chairman, Bihar State Bridge Construction (Ltd.) Patna.

2. The Managing Director, Bihar State Bridge Construction (Ltd.) Patna

3. Senior Project Officer, Bihar State Bridge Construction (Ltd.) Work Division no. 2 Patna.

4. Project Engineer Bihar State Bridge Construction Corporation (Ltd.) Lower Division Yarpur Uparipool Patna.

5. The State of Bihar, through Chief Secretary, Govt. of Bihar Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Archana Prasad, Advocate

For the State : Mr. Sanjay Kumar Sharma, AC to AAG 3

For Bihar Rajya Pul Nirman Nigam : Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 15-02-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioners have prayed for the following relief/reliefs:



“(i) That this writ application has been filed by the petitioners for quashing the order no. 37 dated 23.3.01 contained in annexure 12 passed by the Managing Director, Bihar Bridge Construction Corporation Ltd. i.e. Respondent no. 2 by which the petitioner has been dismissed from the service as well as for quashing the Order no. 421 dated 15.2.07 passed by Managing Director, Bihar Bridge Construction Corporation Ltd. in the Appeal by which the appeal of the petitioner has been dismissed contained in annexure – 14.

(ii) The petitioner further prays for a direction to the respondents to make payment of salary which is due and for payment of other consequential monetary benefit with interest for which the petitioner is entitled.

(iii) The petitioner further prays for his reinstatement in the service.

(iv) Any other relief or reliefs as this Hon’ble Court may deem fit and proper, for which the petitioner is entitled.”

3. The deceased employee is stated to have remained unauthorized absent for about six years. He was dismissed from service on 22.11.1997. Feeling aggrieved and dissatisfied with the order of dismissal, deceased employee filed C.W.J.C. No. 8831 of 1998 and it was disposed of on 28.06.1999. Thereafter, respondents have initiated departmental inquiry on 23.08.1999



and it was concluded in imposition of penalty of dismissal from service on 23.03.2001. Feeling aggrieved and dissatisfied with the order of dismissal, employee preferred appeal before the appellate authority on 31.03.2001 and he suffered an order before the appellate authority on 15.02.2007. Hence, the present petition.

4. Perusal of memorandum of appeal at Annexure - 13 read with appellate authority's order dated 15.02.2007, it is a case of non-consideration of deceased employee's memorandum of appeal in the light of Rule 27 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred as 'Rules, 2005'). Rule 27 of Rules, 2005 reads as under :

“27. Consideration of appeal. - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in view of the provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke or modify the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and



(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of Rule 14 and an inquiry under Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, himself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 18 and thereafter on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of clause (ii) of Rule 18, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (i) to (v) of Rule 14 and an inquiry under Rule 17 has already been held in the case, the appellate authority shall, make such orders as it may deem fit, after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a



reasonable opportunity, as far as may be, of making a representation against such enhanced penalty.

(3) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

5. Having regard to the aforesaid provisions, the appellate authority has not applied his mind in considering each of the contentions raised by the deceased employee in the memorandum of appeal. Appellate authority is exercising quasi judicial functions under the Rules, 2005 and it is amenable to judicial review. In such matters a detailed speaking order is warranted with reference to Rule 27 of Rules, 2005. On this short point, petitioners have made out a *prima facie* case so as to interfere with the appellate authority's order dated 15.02.2007. Accordingly, it is set aside and the matter is remanded to the appellate authority.

6. The petitioners are permitted to file additional statements of facts along with necessary documents, if any, before the appellate authority within a period of one month from the date of receipt of this order. Thereafter, the appellate authority is hereby directed to pass a detailed speaking order after due consideration of each of the contentions raised by the petitioners in the memorandum of appeal further, if any other contentions to be



raised by the petitioners. The above exercise shall be completed within a period of three months from the date of receipt of the petitioners’ additional statement, if any.

7. Writ petition allowed in part.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	17.02.2023
Transmission Date	

