

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14221 of 2021

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Sanjay Kumar Son of Late Bishwanath Prasad Gupta, resident of Mohalla New Durgapuri colony, opposite B. M.P. 6, Road No. 3, Ward No. 47, Kanhauli, Vishundat, Police Station Mithunpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishwesharaiya Bhawan, bailey Road, Patna.
2. The Chief Engineer (Communication) North Bihar Wing, Road Construction Department, Darbhanga.
3. The Superintending, Engineer, Road Construction Department, Road Circle, Darbhanga.
4. The Executive Engineer, Road Construction Department, Road Division, Benipur.
5. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna.
6. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Patha, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Adv.
For the Respondent/s : Mr. Amit Prakash (Ga13)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 31-01-2023 Learned counsel for the petitioner, counsel for the State and counsel for the Accountant General present.

Counsel for the petitioner has filed the present writ application in the form of mandamus directing the respondent to modify the order dated 27.05.2020 issued by Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna whereby and whereunder 90% pension and 90% gratuity has been sanctioned/paid with holding of 10% pension

and 10% gratuity and full leave encashment in the light of Para 7(C) of resolution no.3014 dated 31.07.1980 does not apply to the petitioner as the same is applicable in respect of those Government servants against whom departmental/ judicial proceeding has been instituted during service period which remains inconclusive until superannuation.

Counsel for the petitioner submits that the petitioner was superannuated with effect from 31.01.2020 from the post of Assistant Engineer from the office of Road Sub-Division No.1, Road Division Sitamarhi. His initial appointment was on the post of Junior Engineer in 1988 in Road Construction Department and promoted to the post of Assistant Engineer from 01.07.2005. After retirement on 31.01.2020, the petitioner has been sanctioned/paid only 90% pension and 90% gratuity and has GPF amount. The letter of his payment of sanction of pension and gratuity was dated 27.05.2020. The counsel for the petitioner submits that it is admitted position that on the date of his retirement, there were neither any departmental proceeding nor any judicial proceeding pending against him and in this view of the matter, he sought relief for modification of the letter dated 27.05.2020. Counsel further submits that vide letter dated 11.06.2021, a show-cause notice under rule 139(C) of the Bihar

Pension Rule has been issued to him against whom he has filed the detailed reply which is Annexure- R(5). Counsel submits that even on 11.06.2021, there is neither any criminal proceeding nor any departmental proceeding was pending. According to him, till today, there is neither any departmental proceeding nor any criminal proceeding is pending against him. He submits that the initiation of proceeding under Rule 139(C) of Bihar Pension Rules is non-jurisdictional and in support thereof, he relied on a judgment Muneshwar Prasad Sinha Vs. State of Bihar (Reported 2004(3) PLJR 708 Para 7 to 11).

On the other hand counsel for State in his reply submits that the decision at the level of the department has not taken finally and only show-cause has been issued to the petitioner. It has also been submitted that in Annexure-5 all factual points were taken by the petitioner.

In this view of the matter that this matter has not been finally decided at the level of State. I am not inclined to interfere at this juncture but hereby directing to the authority to apply his mind particularly, about applicability of Section 139(C) of Bihar Pension Rule as well as the judgment mentioned above. Liberty is hereby granting to the petitioner to raise all factual and other legal points which he has already

raised in the writ petition to raise before respondent no.1 who shall pass a reasoned order after receiving fresh representation of the petitioner, raising all the points within 4 weeks from today and Respondent No.1 shall pass reasoned and speaking order on facts and law both within 4 weeks thereafter. It is also directed that if petitioner found entitled to receive his pensionary benefit, his pensionary benefit must be paid within 4 weeks thereafter but in case, the order passed by the respondent no.1 is against the petitioner then the petitioner shall be at liberty to move before the court afresh.

With this observation, this writ application stands disposed of.

(Dr. Anshuman, J.)

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