

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10350 of 2023

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Nawal Kishore S/o Late Chamari Ram, Resident of Mohalla- Flat No. 404,
Block-A, Sajana Shashwatam Apartment, Ara Garden Road, Jagdeo Path, Pin-
800014.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Special Secretary, Minor Water Resources Department, Government of Bihar, Patna.
3. The Joint Secretary, Minor Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Minor Water Resources Department, Bhagalpur.
5. The Superintending Engineer, Minor Irrigation Circle, Munger.
6. The Executive Engineer, Minor Irrigation Division, Begusarai.
7. The Executive Engineer, Minor Irrigation Division, Khagaria.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar, Advocate
For the State	:	Mr. Sita Ram Yadav (GP-16)
		Mr. Yatindra Narayan, AC to GP-16
For the A.G.	:	Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-09-2023

Heard Mr. Ranjan Kumar, learned counsel
appearing on behalf of the petitioner, Mr. Sita Ram Yadav,
learned GP-16 appearing on behalf of the State and Mr. Ram
Kinker Choubey, learned counsel for the Accountant General,
Bihar.

2. Learned counsel appearing on behalf of the
petitioner submitted that petitioner, has filed detailed



representation before the Special Secretary, Minor Water Resources Department, Government of Bihar, Patna. He further submitted that petitioner is at least required to be given the benefit of A.C.P. and M.A.C.P. on account of financial upgradation and so far as the withholding of pension and gratuity is concerned, the same cannot be withheld at this stage. Neither any proceeding was initiated against the petitioner during his service period nor any proceeding was initiated after his retirement as per the provisions of Rule 43 of the Bihar Pension Rules, 1950, therefore, withholding of pension and gratuity is against the settled principle of law laid down by the this Hon'ble Court as well as Hon'ble Supreme Court. In this background, petitioner seeks to file a detailed representation before the Special Secretary, Minor Water Resources Department, Government of Bihar, Patna along with all the requisite documents.

3. Whereas the facts pleaded in the writ petition reveals that the petitioner was holding dual charge as Executive Engineer, Minor Irrigation Division, Begusarai and Executive Engineer, Minor Irrigation Division, Khagaria, and was made to compulsorily retire w.e.f 09.03.2021, vide a resolution conatined in Memo No.1131 dated 09.03.2021 (Annexure P-6),



as per the provision of Rule 74 of Bihar Service Code.

4. Thereafter, vide office order dated 22.10.2021, passed by the Executive Engineer, Minor Irrigation Division, Begusarai, petitioner's salary was deducted for the period of July 2017 and September 2017 to February 2020, alleging excess payment taken by him, which, the petitioner alleges, is not correct because such bill is not prepared by the petitioner and same is prepared by the Finance Department and concerned staff/Treasury Officer (Annexure P-7). The Executive Engineer, Minor Irrigation Division, Khagaria sent letter to Principal Secretary, Minor Water Resources Department, Patna vide Letter No. 52 dated 22.01.2022 and made a request to release/allot a sum of Rs. 2,70,000/- only for payment of petitioner's due amount in the form of petrol, diesel and vehicle expenses, which is pending (Annexure P-8).

5. The Joint Secretary, Minor Water Resources Department, Government of Bihar, Patna sent letters to all Chief Engineers, Minor Water Resources Department, Bhagalpur, Superintending Engineer, Minor Irrigation Circle, Patna and Executive Engineer, Minor Irrigation Division, Begusarai including all Executive Engineers, Minor Irrigation Division vide Memo No. 120 dated 08.03.2022 for payment of hired



vehicle and name of Begusarai Division appeared at Sl. No. 07 which show a sum of Rs. 4.400 Lakhs released in favour of Minor Irrigation Division, Begusarai but same was not paid to petitioner as yet (Annexure P-9). Further, the petitioner himself wrote letter to Investigating Officer cum Chief Engineer, Minor Water resources Department, Bhagalpur on 18.04.2022, in response to departmental letter no. 290 dated 21.01.2022 (Prapatra-k), wherein the petitioner, beside making para-wise reply to the charges as levelled against him, had also stated his inability to attend those meetings which is mentioned in charge sheet (Prapatra-k), in view of the dual charges, which required the petitioner to attend meeting on same date and time, to answer dual charges (Annexure P-10).

6. After the petitioner had filed his show cause on 08.08.2022, the administrative authority in a review meeting, imposed the punishment and after final order was passed by the Minor Water Resources Department, Patna whereby, it was stated in vague and ambiguous terms that 5% deduction was to be made for 5 years from the pension of the petitioner. The petitioner alleges that the order passed for 5% deduction for 5 years from the pension of the petitioner is unclear inasmuch as it does not make it clear as to whether the recovery of 5% is to be



made from 90% pension or 100% pension of the petitioner. The petitioner has only got 90% pension and the concerned department further reduced 5% pension which is not correct in the eye of law because before compulsory retirement petitioner did not received any such type of paper as alleged by the Minor Water Resources Department, Patna. The petitioner spent whole service period with unblemished carrier.

7. On perusal of the records of the case, the facts which emerge is that the petitioner was made to retire compulsory on 09.03.2021 whereas, considering his date of birth as per his Aadhar ID, which is 15.07.1962, he was to superannuate on 31.07.2022, after having completed the age of 60 years as per Rule 57 of Bihar Pension Rules, 1950 and also in view of the Rule 73(i) of Bihar Service Code, which stipulates that the date of compulsory retirement of a government servant is the date on which he completes 60 years of age. The provision contained in Rule 73 has to be read conjointly with Rule 74 of Bihar Service Code, which is reproduced hereinbelow:

"74. (a) The state Government may require any Government servant who has completed twenty one years of duty and twenty-five years of total service calculated from the date of his first appointment to retire from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Whether any Government servant is so required to retire not claim to any



special compensation shall be entertained.

(b) (i) Notwithstanding anything contained in the preceding sub rule a Government servant may, after giving at least three months previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government:]

[Provided further that in case of the officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the rule making authority of the Chief Justice, no such officer and servant under suspension shall retire from service except with the specific approval of the Chief Justice.

[(ii) The appointing authority concerned may after giving a Government servant at least three month's pay and allowance in lieu of such notice, require him in public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

[(iii) A Government servant who retires voluntarily is required to retire in public interest under this rule on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and death-cum-retirement gratuity."

8. On a plain reading of the rules, it appears that the appointing authority has been conferred power to retire a government servant from service in public interest after giving three months' prior notice in writing or an amount equal to three months' pay and allowances in lieu of such notice on the date on which such government servant completes thirty years of qualifying service or attains fifty years of age or on any date



thereafter to be specified in the notice. It has been contended on behalf of the petitioner that the order of compulsory retirement as contained in Memo No.1131 dated 09.03.2021 (Annexure P-6) is couched in innocuous terms and it is made in compliance with the provisions of Rule 74 Bihar Service Code on petitioner's reaching the age of more than 50 years. However, the petitioner has not challenged the order of compulsory retirement before any competent authority.

9. Petitioner's grievance arises from the office order dated 22.10.2021, (Annexure P-7) of the Executive Engineer, Minor Irrigation Division, Begusrai, whereby it was stated that a total of Rs.7,22,652/- was paid in excess to the petitioner, for which the remaining dues of Rs.3,17,251/- was to be recovered from the retiral benefits of the petitioner. Furthermore, in a review meeting, punishment of 5% deduction for 5 years, from the pension of the petitioner, was imposed on the basis of charges levelled against him in Prapatra-k.

10. This court is of the view that material facts such as date of joining in service of the petitioner, the relevant dates on which departmental proceeding was initiated, inquiry report, and other relevant facts for the determination of the issue has not been brought on record.



11. In view of the discussion made herein and in view of the material facts not being brought on record, this Court finds it proper that petitioner shall approach the competent authority for redressal of his grievance.

The Hon'ble Supreme Court in plethora of cases has dealt with concealment/suppression of facts by litigants. I must reproduce observation made by the Apex Court in the case of ***Dalip Singh v. State of U.P., (2010) 2 SCC 114.***

“ 2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

12. The Hon'ble Supreme Court in the case of ***Moti Lal Songara v. Prem Prakash, (2013) 9 SCC 199,*** has held as follows:

“19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent-accused is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court



of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.”

13. It has also been laid down by the Apex Court in ***Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421*** that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court.

“2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.”

14. The petitioner, if so advised, may file his representation before the Special Secretary, Minor Water Resources Department, Government of Bihar, Patna. The Special Secretary, Minor Water Resources Department, Government of Bihar, Patna is directed to dispose of the representation, if any, filed on behalf of the petitioner, in accordance with law, within a period of six weeks from the date



of filing of the representation.

15. Before parting with this order, I am constrained to note that the attempt to mislead the court by suppressing material facts is an immensely condemnable act as it affects administration of justice.

16. 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	18.09.2023
Transmission Date	N/A

