

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10696 of 2017

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Devanand Jha Son of late Gunanand Jha R/o Village- Goshala Mohalla-
Madhubani, P.S. Madhubani, Distt. Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Deptt. of Water Resources Development, Govt. of Bihar, Patna.
3. The Principal Secretary Secretary, Rural Works Deptt. Govt. of Bihar, Patna.
4. The Secretary Rural Works Deptt. Govt. of Bihar.
5. The Account General Bihar, Patna.
6. The Engineer-in-Chief Rural Works Deptt. Bihar, Patna.
7. The Chief Engineer-III, Rural Works Deptt. Bihar, Patna.
8. The Superintendent Engineer, Rural Works Deptt. Work Division, Samastipur
9. The District Magistrate, Begusarai.
10. The Executive Engineer, Rural Works Division Majhaul, Bakhri Begusarai Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uma Shankar Sharma, Advocate
For the Respondent/s	:	Mr.Binay Kumar Pandey, AC to GA 2
For the AG	:	Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-04-2023

The supplementary counter affidavit filed on behalf
of the respondent nos. 3 and 4 is kept on record.

2. Heard Mr. Uma Shankar Sharma, learned counsel
appearing on behalf of the petitioner, Mr. Binay Kumar Pandey,
learned AC to G.A.2 and Mr. Arun Kumar Arun, learned counsel
for the Accountant General (Bihar).



Re : Interlocutory Application No.2 of 2023

3.The claim of the petitioner is that he is entitled for retiral dues from the date of his service i.e. year, 1979 till 27.02.2012 and the order bearing no.156 dated 28.06.2016 read with memo no.2073 dated 28.06.2016 issued under the signature of the Engineer-in-Chief, Rural Works Department, Bihar, Patna will not come into the way, as no reason has been assigned that the petitioner is not entitled for pension. The order has been challenged in I.A.No.02 of 2023.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is adversely affected by the order contained in order no.156 dated 28.06.2016 read with memo no.2073 dated 28.06.2016 and is fit to be quashed.

5. Considering the nature of allegation made against the petitioner and the petitioner has been affected by the aforesaid order for the reasons stated in the I.A.No.2 of 2023, I.A.No.2 of 2023 and the Affidavit are allowed.

Re : CWJC No.10696 of 2017

6. Learned counsel appearing on behalf of the State informs this Court that since the petitioner has alternative remedy of appeal before the appellate authority, the present writ petition is not maintainable.



7. Considering the fact that the petitioner is a retired employee, who had superannuated on 31.08.2014 and he was served with Form- “Ka’ on 27.02.2012 but the proceeding having not been completed within four years, in accordance with the terms of Section 43 (b)(ii) of the Bihar Pension Rules.

8. Learned counsel appearing on behalf of the petitioner further submits that the scheme is of the year 2008 whereas the penalty order has been passed in the year, 2016 but no evidence has been taken into account to show that the petitioner in terms of the scheme was responsible for not performing the work as had to be carried in accordance with scheme. On contrary, the petitioner has furnished bills, measurement books etc. in support of his evidence that he was nowhere involved in the defalcation of money. In want of any evidence to show that by which voucher, the petitioner was given advance amount, the record also did not reveal as to whether the amount was credited in the account of the petitioner, the petitioner is not responsible.

9. Learned counsel for the petitioner further submits that the invoice and the bills, which were submitted by the petitioner in lieu of the work performed by him, were never adjusted and huge amount has been shown to be defalcated by the petitioner, which is contrary to the record.



10.Learned counsel appearing for the State submits that the penalty order is well considered and the petitioner was given proper opportunity in accordance with the departmental proceeding and since he did not produce any evidence in his favour, the penalty order has been passed on the basis of the evidence and the findings of the Inquiry Officer. As such, no lapses have been made in conduct of the departmental proceeding. If the petitioner is so aggrieved by the impugned order, which has been challenged by way of Interlocutory Application in the present writ petition, the alternative remedy is available with the petitioner to make appeal before the competent authority.

11. Having heard rival submissions of the parties, the question involved in the present writ petition is as to whether the order contained in order bearing no.156 dated 28.06.2016 read with Memo No.2073 dated 28.06.2016 is sustainable in the eye of law.

12.Undisputed fact of the case is that the scheme came into effect in the year, 2007-2008. The respondents have not brought on record the contents of the scheme as well as there is no work order in favour of the petitioner or any disbursement of work or advance as claimed by the respondents in the counter affidavit and not the same has been demonstrated in the open court



from the records by the respondents. Learned counsel appearing on behalf of the State could only refer to some of the paragraphs of the supplementary counter affidavit filed on behalf of the respondent nos.3, 4, 6, 7, 8 and 10. Paragraph no.6 of the Supplementary Counter Affidavit is reproduced hereinafter as under :

“That it would be relevant to bring to the notice of the Hon’ble Court that while the petitioner was posted as Junior Engineer under National Rural Employment Programme (NREP), East Champaran, Motihari, all told Eight Schemes were got executed by him but he did not get the work completed within stipulated period in spite of several reminders made by the Executive Engineer, NREP, Motihari due to which the Executive Engineer, NREP, Motihari framed the Prapatra- “Ka” against the petitioner and submitted the same vide his letter no.243, dated 27.02.2012 before the Secretary, Rulral Works Department, Bihar, Patna for initiation of Disciplinary Action.”

13. The petitioner has also not denied the fact that he had not participated in the departmental proceeding and he was not provided with the evidences along with the charge memo contained in form ‘Ka’ in accordance with Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. He has also not denied the fact that the list of witnesses was provided along with Form ‘Ka’. Supplementary counter affidavit is also devoid of such evidence.



14. *Prima facie* this Court finds that such disputed question can not be decided in the writ jurisdiction. In this regard, the Hon'ble Apex Court in the case of **Rourkela Shramik Sangh Vs. Steel Authority of India Ltd.** reported in **2007 (4) SCC 317** has held as under :

“22. There cannot, thus, be any doubt whatsoever that the appellants were fully aware of the fact that they were required to approach the Industrial Tribunal in terms of the provisions of the Industrial Disputes Act for ventilating their grievances. The submission of Mr Shanti Bhushan to the effect that the High Court acts as an authority while exercising its power under Article 226 of the Constitution of India cannot be countenanced. The order of this Court dated 16.10.1995, as quoted supra, is absolutely clear and unambiguous. The term “authority” used in this Court's order dated 16.10.1995 must be read in the context in which it was used. The appellant in terms thereof could seek a reference which would mean a reference in terms of Section 10 of the Industrial Disputes Act. It could also approach “the authority in accordance with law” which would mean authority under a statute. The High Court, by no stretch of imagination, can be an authority under a statute.²³ Furthermore, even otherwise, a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in **Steel Authority of India Ltd. v. National Union Waterfront Workers [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121]**. In any event, the orders of the Chief Labour Commissioner dated 4.1.1995 also show that other documents which were placed on record by the workmen had also been scrutinized and they had not been found reliable.”



15. And recently, in the case of **Shubhas Jain Vs. Rajeshwari Shivam** and Others reported in **(2021) SCC OnLine SC 562**, in Paragraph No.26, the Apex Court has held hereunder:

“It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

16. However, considering the fact that the petitioner is a retired employee from the post of Assistant Engineer, while he was working at Samastipur in the Rural Works Division Department, if the petitioner is so advised to file an appeal before the appropriate appellate authority, the appeal so filed by the petitioner must be disposed of within a period of two months from the date of its filing by the petitioner.

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

18. The Interlocutory Application, if any, shall also stand disposed of.

(Purnendu Singh, J)

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AFR/NAFR	
CAV DATE	
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