

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11409 of 2013**

Ramyati Singh, Son Of Shri Brahmdeo Singh, Resident Of Mohalla-  
Rajbanshinagar, Road No. 2 Extension Police Station- Shastrinagar, District-  
Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Additional Secretary, Road Construction Department, Bihar, Patna.
4. The Special Secretary, Road Construction Department, Bihar, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                              |
|----------------------|---|----------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Rakesh Kumar Singh, Advocate<br>Mr. Suresh Kumar, Advocate<br>Mr. Arbind Kumar, Advocate |
| For the State        | : | Mr. Gyan Prakash Ojha, GA 7<br>Mr. Abhishek Singh, AC to GA7                                 |

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

**Date : 29-07-2024**

Heard Mr. Rakesh Kumar Singh along with Mr. Suresh Kumar and Mr. Arbind Kumar, learned counsels appearing on behalf of the petitioner; Mr. Gyan Prakash Ojha, learned GA7 along with Mr. Abhishek Singh, learned AC to GA 7 for the State.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

(I) For issuance of an appropriate writ to quash the order issued under the signature of the Special Secretary, Road Construction Department, Bihar, Patna whereby and whereunder he has rejected the review application preferred by the petitioner vide memo no.8069 dated 20.07.2012.

(ii) For issuance of an appropriate



*direction to quash notification bearing memo no.14768(S) dated 21.10.2010 whereby and whereunder the Additional Secretary, Road Construction Department, Bihar, Patna while concluding the departmental proceeding under Rule 43(b) of Bihar Pension Rules deducted five percent amount of pension permanently from the petitioner and consequently order issued under the signature of the Deputy Secretary whereby and whereunder in the light of the aforesaid departmental notification five percent amount of pension be deducted from the date of starting pension from the petitioner vide memo no.15821(s) dated 24.11.2010.*

*(iii) For issuance of an appropriate direction to restore full pension to the petitioner.*

*(iv) For passing such other order or orders for which the petitioner is entitled under the law and in the facts and circumstances of the case.”*

3. Brief facts of the case are that the petitioner while posted as Executive Engineer, R.E.O., Works Division, Patna had entered into an agreement for road repairing work with the contractor Shri Chhote Lal Rai in respect of Lodipur-Sadipur Road measuring two Kilometers for the Financial Year 1998-99 worth Rs.1,05,363/-. The said agreement was executed by the petitioner allegedly without any administrative approval/allotment. Further no wide publication was made to invite tender for the said work. Besides, after the measurement and preparation of bill by the Junior Engineer the said bill was not checked/examined by the petitioner. For the aforesaid charges, a departmental inquiry was initiated against three persons including the petitioner under the provisions of Bihar Government' Servant (Classification, Control and Appeal) Rules, 2005. The Special Officer-cum-Deputy Secretary, Road



Construction Department, Bihar had served memo of charges to the petitioner *vide* memo no.5008 dated 12.04.2007 and three charges were formulated. Thereafter, the petitioner submitted his reply before the Inquiry Officer, who after considering the reply of the petitioner held that all three charges levelled against the petitioner was not established and recommended for exonerating him from the charges levelled against him *vide* his report dated 14.09.2007. However, thereafter the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department had asked second show cause from the petitioner, while differing from reasons of the inquiry officer in respect of charge no.2 regarding non-performance of wide circulation of the tender through newspaper and the petitioner was asked to submit his reply within 15 days on the aforesaid charges *vide* letter no.13860 dated 03.12.2007. The petitioner submitted his reply well within time *vide* letter dated 15.12.2007 (Annexure 6). The respondent no.3, the Additional Secretary, Road Construction Department, Bihar, Patna being not satisfied by the reply directed for deduction of 5% amount of pension permanently from the petitioner *vide* memo No.14768(S) dated 21.10.2010 (Annexure 8). Thereafter, the Deputy Secretary, Road Construction Department in pursuance of the aforesaid departmental notification, imposed 5 % amount of pension be



deducted from the date of starting of pension from the petitioner *vide* memo no.15821(s) dated 24.11.2010 (Annexure 9). Being aggrieved by the said order, the petitioner preferred review before the Hon'ble Minister, Road Construction Department, Bihar Patna on 11.01.2011 with a request to review the said order dated 21.10.2010 and its consequential order dated 24.11.2010. Thereafter, the Special Secretary, Road Construction Department, Bihar rejected the review application *vide* memo no.8069 dated 20.07.2012 (Annexure 11). Aggrieved by the aforesaid orders, the petitioner has preferred the present writ petition.

4. Mr. Rakesh Kumar Singh along with Mr. Suresh Kumar, learned counsels appearing on behalf of the petitioner submitted that disciplinary action taken against the petitioner only because the department had faced difficulty in making payment of a sum of Rs.74,393/- for the work done on the strength of agreement entered by the petitioner, which was not in accordance with law. Learned counsel submitted that the repairing work in respect of Lodipur-Sadisopur Road was immediately required which necessitated the petitioner to enter into agreement with the contractor in public interest and the allegation will not constitute misconduct. Referring to the order of a Division Bench of this Court passed in **L.P.A. No.638 of**



2007, preferred by the State Government in the claim of the Contractor Chhote Lal Rai, learned counsel submits that the Division Bench after considering the fact that road was completed, the contractor was required to be paid a sum of Rs.74,393/- according to the measurement book. Learned counsel further submitted that if at all there was any procedural lapses on the part of the petitioner, no loss has been quantified and the extent of loss the petitioner has caused. Learned counsel submitted that merely delay on the part of the higher authorities in making payment to the contractor will not call for imposition of penalty. In this regard has referred to a judgment of the Apex Court in case of **Chandreshwar Prasad Sinha Versus State of Bihar and another** reported in (2001) 9 Supreme Court Cases 369. Referring to paragraph no.9 thereof, learned counsel submitted that the law as on date is well settled that in case there is no determination of loss alleged to have been suffered by the State and quantified to the extent the delinquent has put such loss, the order of penalty calls for interference. Learned counsel further submitted that the responsibility rests on the Superintending Engineer and the Assistant Engineer and in whose respect, departmental proceeding was also initiated for similar charge, but they have been exonerated and in this regard, specific statement has been made in paragraph no. 9 of the writ



petition. On these grounds, learned counsel seeks that the order dated 21.10.2010, passed by the Additional Secretary, Road Construction Department, Patna, order dated 24.11.2010 passed by the Deputy Secretary, Road Construction Department, Bihar and order dated 20.07.2012 passed by Special Secretary, Road Construction Department, Bihar, Patna, as contained in Anneuxre 8, 9 and 11 respectively calls for interference by this Court.

5. On the other hand, Mr. Abhishek Singh, learned State counsel referring to paragraph no.10 of the counter affidavit submitted that the allegation against the petitioner is specific, while allegation against Shri Basant Ram (Superintending Engineer) and Shri Braj Kishore Prasad (Assistant Engineer), the department is/was contemplating to impose minor punishment but Shri Basant Ram was exonerated on the ground that he had superannuated on 31.07.2012, while Shri Braj Kishore Prasad was exonerated on the ground that alleged irregularity has not taken place during his posting. Learned counsel further submitted that there is neither any procedural irregularity in departmental proceeding nor the petitioner have been able to make out a case to hold the order perverse, no interference is called for by the Court while exercising judicial review with the penalty order.



6. Having heard the rival submissions made on behalf of the parties, as well as, the fact that the allegation which has been levelled against the petitioner is in respect of procedural difficulty in making payment to the contractor after completion of the work. The Division Bench in L.P.A. No. 638 of 2007 after recording that the work was completed which is supported by bill raised by the contractor, had not found any fault in the order passed by learned Single Judge, who had directed the respondents to make payment of a sum of Rs.74,393/- out of the total work for Rs.1,05,363/-. The authorities having admitted that the work has been completed as per the contract entered into by the petitioner on behalf of the State Government, who was posted at the relevant time as the Executive Engineer cannot be faulted for having acted against the law. A reference of PWD code would make it more clear that in respect of any work completion, the same is entered into the measurement book and payments have to be made on the said basis. Mere procedural lapses on part of the petitioner cannot constitute misconduct. The authorities have not taken any action in respect of the two other delinquent employees who have been exonerated about which the petitioner has made a specific statement in paragraph no.9 of the writ petition, which has not been denied by the respondents. I don't find any reason that any



loss was caused to the State.

7. The law in respect of interference by this Court is well settled by the Apex Court in the case of **B. C. Chaturvedi Vs. Union of India & Ors.** reported in **(1995) 6 SCC 746** stating therein that in the case of penalty order, Article 21 of the Constitution of India is attracted and in view of the interdependence of the fundamental right, the punishment/penalty awarded to be reasonable and if it be unreasonable, Article 14 of the Constitution would be violated, however, for the self-imposed limitation while exercising power under Section 226 of the Constitution of India, I find it proper to direct the Disciplinary Authority/Appellate Authority to reconsider the penalty imposed and pass appropriate punishment order with cogent reason.

8. I am of the opinion in light of the aforesaid reason, the impugned order dated 21.10.2010, passed by the Additional Secretary, Road Construction Department, Patna; order dated 24.11.2010 passed by the Deputy Secretary, Road Construction Department, Bihar and revisional order dated 20.07.2012 passed by Special Secretary, Road Construction Department, Bihar, Patna, as contained in Annexures 8, 9 and 11 respectively are hereby set aside and quashed for the aforesaid reason.



9. The writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
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