

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12045 of 2024

Shankar Kumar Son of Rajendra Mandal Resident of Manju Market, Naya Bazar, Ward No.9, P.S.-Saharsa Sadar, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Additional Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Engineer in Chief Cum Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department, Saharsa Circle, Saharsa.
6. The Executive Engineer, Public Health Engineering Department, Supaul Division Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akash Anand, Advocate
For the Respondent/s : Mr. Sanjay Prasad, AC to AAG4

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-08-2024 Heard Mr. Akash Anand, learned counsel appearing on behalf of the petitioner and Mr. Sanjay Prasad, learned AC to AAG 4 for the State.

2. Petitioner is aggrieved by the order dated 10.05.2024 passed by the Superintending Engineer, Public Health Engineering Department, Saharsa Circle, Saharsa, by



which it has been informed that the extra amount for the period 01.07.2011 to 01.07.2020, which was paid to the petitioner by way of increments has been cancelled and order of recovery has been passed.

3. Learned counsel appearing on behalf of petitioner submitted that the reason which has been assigned in the order cannot be sustained in light of law laid down by the Apex Court in the case of *Amresh Kumar Sinha & Ors. v. The State of Bihar & Ors. (SLP (C) Nos. 8219-8226 of 2016)* as well as clarification made by the Full Bench of this Court in case of *Kamlanand Thakur vs. State of Bihar & Ors. (C.W.J.C. No. 18727 of 2017)* and other analogous cases. Learned counsel further submitted that there is no consideration, as to whether, the case of the petitioner was examined by the Screening Committee and, as such, subjective desire of the Principal Secretary calls for interference of this Court.

4. Learned counsel appearing on behalf of the State, referring to the order contained in Memo No.192, dated 10.05.2024, submitted that the same don't call for any interference by this Court, as the same is a reasoned order, wherein it has been informed that due to some reason, no examination was conducted any time before the petitioner and



other persons similarly situated had attained the age of 50 years and, as such, the petitioner cannot be exempted from possessing the required qualification.

5. It is well settled law that in cases where executive action has been passed without giving any opportunity to the affected parties, which affects the vital right of the parties, in such cases, interference by this Court in exercise of power under Section 226 of the Constitution of India is called for.

6. The Apex Court in the case of ***Sarvepalli Ramaiah v. District Collector, Chittoor***, reported in (2019) 4SCC 500 has held as follows:-

“40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review.43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process...”

7. In the present case, though the order dated 12.12.2022 appears to be authoritative order and the same was followed by the Superintending Engineer, who had sought show cause from the petitioner but the matter was not sent to the Screening Committee before the case of the petitioner was considered as per the requirement of different scheme of



financial progression. I find the action of the Superintending Engineer calls for interference and the order is held to be without jurisdiction so far as the petitioner is concerned. The Superintending Engineer is directed to place the case of the petitioner before the Screening Committee for considering his service particulars and eligibility in accordance with law laid down in case of *Amresh Kumar Sinha (supra)* as well as, in case of *Kamlanand Thakur (supra)* and A.C.P. and M.A.C.P. Scheme, before any action of recovery is made from the petitioner. The above exercise must be done forthwith without delay as the vital right of the petitioner is being affected.

8. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

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