

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13600 of 2024

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Awadhesh Kumar Mandal Son of Late Dhaneshwar Mandal, Resident of Flat No. 202, Monika Apartment, Anandpuri, P.S.- Sri Krishna Puri, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Building Construction, Govt. of Bihar, Patna.
2. The Secretary, Department of Building Construction, Govt. of Bihar, Patna.
3. The Additional Secretary, Department of Building Construction, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Building Construction, Govt. of Bihar, Patna.
5. The Engineer-in- Chief, Department of Building Construction, Govt. of Bihar, Patna.
6. The Chief Engineer, North Wing, Department of Building Construction, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Sumit Shekhar Pandey, Advocate Ms. Kalpana, Advocate Mr. Lalan Kumar, Advocate
For the Respondent/s	:	Mr. Braj Bhushan Mishra, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 12-09-2024

Heard learned Senior Counsel for the petitioner
and learned counsel for the State.

2. The present writ petition has been filed with
the following reliefs:-

I. In the nature of "certiorari" for setting aside the
resolution as contained in Memo No. Bhawan/11/AAROP
(Muzaffarpur)-09/2013-4596(Bh) dated 18.06.2024 issued



under the signature of Additional Secretary to the Government, Department of Building Construction, Govt. of Bihar, Patna, whereby and whereunder the Disciplinary Authority differing with inquiry report of charges not proved against the petitioner in continued departmental proceeding, directed for initiation of further proceeding under Rule 18(1) of Bihar Govt. Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred as the Rules, 2005).

II. In the nature of "mandamus" also directing and commanding the respondent authorities not to go ahead with a further departmental proceeding in terms of resolution dated 18.06.2024 as stated above.

III. In the nature of "mandamus" also directing and commanding the respondent authorities to treat the petitioner reinstated in service from the date of suspension dated 19.06.2013 till date of superannuation dated 31.05.2016 and further direct to pay the petitioner all the arrears of salary as well as pensionary benefits including pension, gratuity, leave encashment, provident fund etc. due to the petitioner forthwith with statutory as well as penal interest @ 18% per annum for delayed payment as the delay has been caused on the part of department.



IV. For any other reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case.

3. Learned Senior Counsel for the petitioner submits that the order contained in Memo No. Bhawan/11/AAROP (Muzaffarpur)-09/2013-4596(4) dated 18.06.2024 issued by the Disciplinary Authority is bad in law due to the reason that this decision has been taken in gross violation of Rule 18(1) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, (hereinafter referred to as the 'CCA Rules, 2005'). Learned Senior Counsel submits that by the said memo, it has been decided that Disciplinary Authority has recommended for further enquiry against the petitioner. Counsel submits that no opportunity was granted to the petitioner in this matter and, therefore, this decision is bad in law. Learned Senior Counsel has also argued alternatively in this case that petitioner was subject to departmental proceeding, since 2013. He submits that he has moved before this Hon'ble Court earlier in CWJC No.21144 of 2013., which was dismissed vide order dated 22.02.2016 with specific direction to the respondent authorities to conclude the departmental enquiry without unnecessary delay preferably



within a period of six months from the date of receipt of a copy of this order. Learned Senior Counsel submits that the departmental enquiry has not been concluded till date and by virtue of the memo dated 18.06.2024, which is impugned here, a direction for further enquiry was made in the light of Rule 18(1) of the 'CCA Rules, 2005'. Learned Senior Counsel further submits that the petitioner has retired from service on 31.05.2016 and till date he has not been provided any pensionary benefits including pension, gratuity, leave encashment, provident fund etc. Learned Senior Counsel relied on Full Bench Judgment of this Hon'ble Court in the case of **Arvind Kumar Singh and Others Vs. The State of Bihar** reported in **2018(2) PLJR 933**, in which this Hon'ble Court has pleased to held that once Rule 43(c) was incorporated into the Statute, the State Government is not empowered to withhold complete pension, which includes gratuity of an employee, who is facing departmental enquiry or judicial proceeding on the date of his superannuation he would be entitled to provisional pension which would include gratuity to the tune of an amount not less than 90 per cent. In this background, counsel for the petitioner submits that the petitioner is entitled for the said pensionary benefits even if the departmental proceeding is still



pending.

4. Learned counsel for the State, on the other hand, submits that the State is ready to conclude the departmental proceeding within the fixed period of time, but he submits that on the decision referred by the petitioner of Full Bench a decision has to be taken by the respondent.

5. In the light of the submissions made and upon scrutiny of Rules 18(1), 18(2) and 18(3) of 'CCA Rules, 2005' which state as follows:-

“18. Action on the inquiry report.-(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.



(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.”

6. It transpires to this Court that for the purpose of deciding by the Disciplinary Authority for further enquiry or on disagreement memo, there is no need for granting any opportunity of hearing. Opportunity of hearing has to be granted according to Rule after taking such decision on further course of action. The Rule is very clear that whenever there shall be a further enquiry or matter reached towards final order, the delinquent has to be heard. Here in the present case, the decision has been taken by the Disciplinary Authority recommends for further enquiry and it is due to this reason this Court is of the firm view that there is no need of any interference in the said memo, which is Annexed as Annexure-P/24 dated 18.06.2024. But on the point of payment of the pensionary benefits to the petitioner and, particularly, in the light of the Full Bench decision i.e., **Arvind Kumar Singh** (Supra), this Court is of the firm view that Rule 43(c) of the



Bihar Pension Rules is applicable in the statute with effect from 09.07.2012 and, therefore, this provision is applicable upon the petitioner also. Hence, in this regard, this Court hereby directs that further enquiry which has been recommended in the light of Annexure-24 be completed within 90 days from the date of production of a copy of this order by the petitioner before the authority assigned under Annexure-14. The petitioner is hereby directed to file his representation to the authority entitled for payment of his pensionary benefits within 30 days with this order and considering the Full Bench decision of this Hon’ble Court **Arvind Kumar Singh** (Supra), the authority shall decide for grant of pensionary benefits to the petitioner within 60 days thereafter.

7. It is made clear that upon decision in the light of Full Bench the payment shall be made within the said period of 60 days.

8. Accordingly, this writ petition stands disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2024
Transmission Date	NA

