IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.952 of 2019
In
Civil Writ Jurisdiction Case No.19135 of 2014

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1. The State Of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Road Construction Department, Govt. of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna
3. The Principal Secretary Finance Department, Govt. of Bihar, Patna
4. The Deputy Secretary (Vigilance) Road Construction Department, Govt. of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna
5. The Joint Secretary Road Construction Department, Govt. of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna

... ... Appellant/s

Versus

1. Yogendra Prasad Singh S/o Late Matukdhari Singh R/o House No. 1/10, Vivekanand Marg, North Sri Krishna Puri, P.s.- Sri Krishnapuri, Distt.- Patna, Bihar
2. The Accountant General Beer Chand Patel Path, R-Block, Patna, Bihar
3. The Senior Accoounts Officer Accountant General, Beer Chand Patel Path, R-Block, Patna, Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Krishna Kant Singh(Ac To Sc 10)
For the Respondent/s : Mr.Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-04-2024

On 13.03.2024, the following order was passed:-

> *"Service of notice to the 1st respondent is completed however, there is no representation in order to give one more opportunity to 1st respondent.*
>
> *2. Re-list this matter after three weeks and if there is no representation on behalf of 1st respondent, matter would be decided with the available records.*

3. Heard I.A. No.03/2024 in LPA No. 952/2019, it relates to condonation of delay in filing LPA No.952/2019 for the reasons stated in application and affidavit delay of 136 days stands condoned.

4. Accordingly, I.A. No. 03/2024 stands allowed.

5. Re-list this matter on 03.04.2024."

2. Today, there is no representation on behalf of the contesting respondent - *Yogendra Prasad Singh*.

3. Appellants-State have assailed the order dated 18.02.2019 passed in CWJC No. 19135 of 2014. Respondent – *Yogendra Prasad Singh* was subjected to disciplinary proceedings and he was placed under suspension on 07.10.2006. During pendency of the disciplinary proceedings, he has attained age of superannuation and retired from service on 31.12.2008. Whereas, the departmental inquiry was concluded on 12.04.2012, while imposing the penalty of withholding of 10% pension for a period of 3 years. Further, suspension period has been treated as suspension restricting to subsistence allowance only. During pendency of the CWJC No. 19135 of 2014, respondents have passed one more order *vide* Memo No. 1863 dated 08.09.2015 while clarifying that contesting respondent is not entitled to increment and further it is clarified that suspension period would

be counted for the purpose of pension. It was subject matter of challenging CWJC No. 19135 of 2014. It is necessary to re-produce portion of the learned Single Judge order viz., Para 6 & 7 and it reads as under:-

> *"6. Counsel for the petitioner relying upon the provisions contained in Rule 18 of the Bihar Service Code, read with Rule 14 of the Bihar CCA Rules, 2005 has contended that since no such penalty had been awarded to the petitioner by the Disciplinary Authority in the order dated 12.04.2012 to the extent that his increment be witheld, it was not open to the respondent authorities to do so by way of a clarification in response to a query made by the office of the Account General. Counsel for the petitioner has also relied upon the decision in the case of* ***Kishori Lal v. State of Bihar*** *reported in* ***2008 (2) PLJR 56,*** *as taken note of in the order dated 08.08.2014 passed in the case of* ***Bhola Prasad v. State of Bihar & Ors.,*** *in* ***C.W.J.C. No. 12932 of 2008.***
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> *7. This Court is also in agreement with the submission of counsel for the petitioner. Since the punishment order dated 12.04.2012 did not contemplate withholding of annual increments, the petitioner would be entitled to the notional benefits on account of annual increment for the entire period of his suspension from 07.10.2006 to 31.12.2008 and for fixation of his retiral benefits by granting the said benefits notionally. It is only the actual benefits of annual increments which the petitioner cannot claim in view of the fact that for the period of suspension he has been denied benefit of payment of salary under order of punishment. Said notional benefit*

> *should be made available to the petitioner by the authorities within a period of three months from the date of receipt/production of a copy of this order, by the authorities concerned."*

4. No doubt, withholding of increment is not one of the punishment imposed on the contesting respondent. At the same time, during pendency of departmental inquiry read with the fact that he was under suspension, in such circumstances he is not entitled to increment. Before granting annual increment service record was required to be verified. If service records are good in that event annual increment would be granted. On the other hand, contesting respondent was placed under suspension till his date of retirement, therefore, annual increment which was due in the year 2006, 2007 & 2008 is not liable to be extended to the contesting respondent since he has not been exonerated. Further, State have clarified in the Memo No. 1863 dated 08.09.2015, to the extent that contesting respondent is not entitled to count the suspension period towards calculation of pension and not for increment. Though, contesting respondent has assailed the Memo No. 1863 dated 08.09.2015 by means of Interlocutory Application, however, learned Single Judge has not set aside or interfered and Memo No. 1863 dated 08.09.2015 decision is intact.

5. Further, contesting respondent has not filed LPA so as to examine the validity of 08.09.2015 decision. Therefore, the

learned Single Judge has committed error in granting relief to the contesting respondent only with reference to the fact that appellants-State have not imposed penalty of withholding of increment under the Bihar Government Servants (Classification,Control & Appeal) Rules, 2005. On the other hand, for the purpose of extending annual increment conduct and service records of an employee/government servant were required to be examined. In the present case, contesting respondent was placed under suspension for about 2 years and it was concluded in imposition of penalty of withholding of 10% pension for a period of 3 years and it has attained finality. Therefore, order of the learned Single Judge is liable to interfered.

6. Accordingly, order dated 18.02.2019 passed in CWJC No. 19135 of 2014 stands set aside. CWJC No. 19135 of 2014 stands rejected. The present LPA No. 952 of 2019 stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekkr/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2024
Transmission Date	NA