

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11529 of 2016

=====

Ram Kumar Chaudhary S/o Late Uma Kant Chaudhary at present residing at
near Anganbari Kendra, Adarsh Nagar Samastipur,

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna
4. The Secretary, Water Resources Department, Government of Bihar, Patna
5. Er. Devi Rajak, Engineer - in - Chief North Water Resources Department,
Government of Bihar, Pat
6. Er. Ram Pukar Ranjan, Engineer - in - Chief South Water Resources
Department, Government of Biha
7. Shri Jiut Singh, Deputy Secretary, Water Resources Department, Govt. of
Bihar, Patna
8. Shri Jagdish Prasad under Secretary, Water Resouces Department, Govt. of
Bihar, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Ram Kumar Chaudhary, (in person)
For the Respondent/s : Mr.Md. Nadim Seraj, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 08-04-2025

Heard the petitioner who appeared in person and
Learned Counsel for the State.

2. The petitioner has filed the present writ petition
for setting aside the order contained in Memo No.320 dated
30.01.2015. Further prayer has been made for setting aside the
order contained in Memo No.966 dated 28.04.2015 and further
for setting aside the order contained in Memo No.552 dated



01.04.2016.

3. The petitioner appeared in person submits that by those orders, the punishment of imposing deduction of 10% from pension of the petitioner for 5 years, has been made which was subsequently approved by the appellate authority and finally by Annexure-4 *i.e.*, order dated 01.04.2016, it has been ordered not to make payment of salary to the petitioner *w.e.f.* 15.06.2007 to 30.09.2011 as well as non-payment of any benefit of subsistence allowances in between 25.12.2007 to 30.09.2011.

4. The petitioner appeared in person further submits that he was appointed as Junior Engineer in the Department of Irrigation on 28.09.1978. He was subject to the departmental proceeding by which punishment has been imposed of dismissal from service vide order dated 20.04.2009 passed by the Engineer-in- Chief (South), Water Resources Department, Government of Bihar, Patna.

5. The petitioner appeared in person further submits that he has challenged the said order before this Hon'ble Court in C.W.J.C. No.12102 of 2010 which was dismissed vide order dated 25.11.2011. Subsequently, the said order has been challenged by him in LPA No. 54 of 2012. He further submits that the said LPA was allowed in favour of the petitioner vide



order dated 15.05.2014 and specific observation was made by this Hon'ble Court by which the order of dismissal of the petitioner dated 20.04.2009 as well as the order of appellate and the revisional authority affirming the same, were set aside. It was also directed that the petitioner shall be reinstated in the service, but he shall be kept under suspension, so that status quo as existing on the date of dismissal would stand restore and the disciplinary authority shall re-consider the quantum of punishment.

6. The petitioner appeared in person further submits that the order passed by this Hon'ble Court in LPA No. 54 of 2012 vide order dated 15.05.2014, has not been implemented in its true spirit and sense. He further submits that the order of dismissal dated 20.04.2009 its appellate and revisional order all were dismissed thereafter, there was no proceeding pending against the petitioner and the petitioner has completed his age of superannuation dated 30.09.2011. He further submits that once the petitioner retired from his service, then he was not subject to any departmental proceeding, due to the reason that the employer -employer relation has ended. In support thereof, the petitioner relied on judgment of Hon'ble Supreme Court of India in case of **Moti Ram Deka Vs. General Manager N.E.F.**



Railway reported in **1964 AIR SC 600**. He further relied on the judgment of **Deo Prakash Tiwari Vs. U.P. Cooperative Institutional Board, Lucknow** reported in **(2014) 7 SCC 260** and submits that according to those judgments, once the appellant had retired from service, then there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefit.

7. The petitioner appeared in person further submits that the case of **Kaleshwar Prasad Sharma Vs. the Bihar State Electric Board** reported in **2009 (i) PLJR 657** is very much clear that Rule 43(b) of the Bihar Pension Rules does not empower a disciplinary authority or an employer to reopen the matter which stood finally concluded during the service period of an employee for the purpose of exercise of power under Rule 43(b) and for the purpose of passing an order of withholding pension of an employee for a period or permanently.

8. The petitioner appeared in person further submits that the order for non-payment of salary for specified period is also bad in law, as Rule 11(5) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 is very much clear and specific that once the petitioner retired, then the



relation of employer and employee ended, no proceeding could be made, and therefore, petitioner shall be entitled for the salary.

9. The petitioner appeared in person further submits that in the light of the pleadings made by him as well in the light of the judgment mentioned above, all the 3 orders which he has challenged contained in Annexures 1, 2 and 4, are fit to be set aside and direction be given to Respondents-State to make entire payment of his dues after setting aside those orders.

10. Learned Counsel for the State on the other hand submits that the present writ petition is fit to be dismissed due to the reason that the petitioner has earlier moved before this Hon'ble Court in LPA No. 54 of 2012 arising out of C.W.J.C. No.12102 of 2010.

11. Counsel further submits that vide order dated 15.05.2014, this Hon'ble Court has pleased to pass order that the disciplinary proceedings do not suffer from any procedural or statutory illegality or irregularity, but the dismissal order passed by the disciplinary authority has been dismissed with a view to re-consider on the point of quantum of punishment meted out to the petitioner. He further submits that this Hon'ble Court at the time of passing order in LPA No. 54 of 2012 has pleased to make a cautious decision and indicated that it would



make clear that remand is only for this limited purpose made to the disciplinary proceeding to reconsider the quantum of punishment meted out to the appellant. He further submits that in this view of the matter, the authorities concerned have passed orders which are contained vide Annexures 1, 2 & 4, completely in accordance with law and there is no infirmity to the said order.

12. Counsel further submits that the departmental proceeding was concluded in the year 2009 by way of dismissal to the petitioner. He further submits that the petitioner has challenged the said order before this Hon'ble Court and this Hon'ble Court vide order dated 15.04.2014 has pleased to allow the LPA, setting aside the dismissal order dated 20.04.2009 and further directed to pass order on quantum of punishment indicates that the departmental proceeding has not been concluded in the light of order passed by the Hon'ble Division Bench of this Court on which the petitioner and respondents both are relying.

13. Counsel further submits that the dismissal order dated 20.04.2009, this Hon'ble Court has pleased to direct the respondents authorities to reinstate the petitioner, therefore the petitioner has been correctly reinstated *w.e.f.*, 20.04.2009, but it



was also ordered to keep the petitioner under suspension, therefore, the petitioner was suspended from the same date.

14. Counsel further submits that respondents are very conscious on this point that the petitioner has completed his age of superannuation on 30.09.2011, but this fact could not be placed before this Hon'ble Court in Division Bench at the time of passing order in LPA No. 54 of 2012, and therefore, at the time of passing order in the said LPA, this fact could not come before this Hon'ble Court that on the date of passing final order in the said LPA, the petitioner has already completed his age of superannuation and the said order was passed on 15.04.2014.

15. Counsel further submits that since respondents authorities are very conscious about the said situation, therefore, they have taken shelter of law prior to passing of the order as directed by this Hon'ble Court in LPA No. 54 of 2012. After direction by this Hon'ble Court to pass afresh order on quantum of punishment, respondent authority had drawn proceeding against the petitioner under section 43(b) of the Bihar Pension Rules and upon switch over the departmental proceeding under section 43(b) of the Bihar Pension Rules, the respondents authorities have issued a fresh show-cause in this regard,



because the effect on the petitioner may be of change of his pensionary benefits including pension.

16. Counsel further submits that in this view of the matter, the decision which is annexed as Annexure-1 has been made completely in accordance with law and it reflects every lawful steps which has been taken by the respondents at the time of passing order contained in Memo No.320 dated 30.01.2015.

17. Counsel further submits that Annexure-2 is the order passed by the appellate authority, when the petitioner has challenged the order passed by the Engineer-in-Chief before its appellate authority *i.e.*, Secretary. He further submits that the Secretary has also passed a reasoned order considering all aspect of the matter and affirmed the order passed by the original authority/ disciplinary authority.

18. Counsel further submits that in the departmental proceeding, there is special provision made in law on which petitioner has also put emphasis that the disciplinary authority has to decide about the payment of salary and subsistence allowances during the period of disciplinary authority. He further submits that decision has been taken completely in accordance with law and the provision laid down under Rule 11(3) of the C.C.A. Rules, 2005.



19. Counsel further submits that the judgments on which the petitioner relied, is not applicable in the case of the petitioner due to the reason that the petitioner is wrongly construed that once the punishment order has been ended vide order dated 15.05.2014 in LPA No. 54 of 2012 and the petitioner has completed the age of superannuation dated 30.09.2011, then in that case, after retirement, departmental proceeding cannot continue in any view of the matter.

20. Counsel further submits that the facts and circumstances of all the above 3 judgments *i.e.*, Moti Ram Deka Case (supra), Deo Prakash Tiwari Vs. U.P. Cooperative Institutional Board, Lucknow (supra) and Kaleshwar Prasad Sharma Vs. the Bihar State Electric Board (supra), are quite different as from the petitioner.

21. Counsel further submits that at the time of passing final order in LPA No. 54 of 2012, it could not be placed by any of the parties that the petitioner has already completed his age of superannuation, even the petitioner has not filed either any review or challenged the order before the higher forum and now, by way of challenging the order in writ petition, he could not avail that benefit due to the reason that Hon'ble Division Bench in LPA No. 54 of 2012 has pleased to direct the



authority to pass afresh order on quantum of punishment and also held that there is no any procedural or statutory illegality or irregularity in the decision. Meaning thereby, the order and decision taken by the Enquiry Officer has been duly approved and once in the departmental proceeding, it has been duly approved then, it has to be ended in accordance with law and it cannot be kept in abeyance.

22. Counsel further submits that since the orders have the force to be concluded by the direction of this Hon'ble Court in LPA No. 54 of 2012, the argument of the petitioner could not be accepted that the departmental proceeding has been ended prior to his retirement and only due to misconception, the petitioner has filed the writ petition raising all such points.

23. After hearing the petitioner who appeared in person and counsel for respondents as well as upon perusal of the documents and judgments, it transpires to this Court that in Moti Ram Deka Case (supra), the validity of Rules 148 and 149 of the Railway Establishment Code was challenged, where no provision of enquiry or notice was mentioned and Hon'ble Supreme Court of India has tested the said provision in the light of Article 311(2) of the Constitution of India and allowed the case in favour of Moti Ram Deka. But here in the present case,



situation is completely otherwise, the disciplinary authority was directed to pass fresh order by the order passed by Hon'ble Division Bench in LPA No. 54 of 2012, hence, the said judgment is not applicable at all.

24. This Court is of the firm view that the point which the petitioner is raising that once he completed the age of superannuation on 30.09.2011 and final order has passed on 15.05.2014 in LPA No. 54 of 2012, then proceeding shall not continue, is basically wrong proposition of law assumed by the petitioner. Situation is completely otherwise, in Moti Ram Deka Vs. General Manager N.E.F. case (supra) and other two judgments. Here, departmental proceeding was initiated and challenged before the Hon'ble Court in Division Bench clearly held which states as follows:-

“23. Situated thus, we are of the view that the disciplinary authority should reconsider the quantum of punishment meted out to the appellant and we would make it clear that remand is only for this limited purpose inasmuch as we have already held that the proceedings do not suffer from any procedural or statutory illegality or irregularity.

24. In the result, the order of dismissal, dated 20.04.2009, as well as order of appellate authority and the revisional authority



affirming the same are hereby set aside. On the setting aside of the order of the appellant's dismissal, dated 20.04.2009, aforementioned, the appellant shall be reinstated in service, but he shall be kept under suspension so that the status quo, as existing on the date of dismissal, would stand restored and the disciplinary authority shall reconsider the quantum of punishment.”

25. From those paragraphs, it becomes crystal clear that this Hon'ble Court in LPA No. 54 of 2012 has pleased to approve the finding of the Enquiry Officer and reached on conclusion that there is no procedural or statutory illegality or irregularity and the only aspect, the Court has permitted to enter that is to reconsider the quantum of punishment meted out to the petitioner and this Court also found that at the time of passing order vide Annexure-1, the respondents authorities have taken due care of Rule 43(b) of the Bihar Pension Rules and drawn a proceeding in this view of the matter. In Moti Ram Deka case (supra), Deo Prakash Tiwari case (supra) and Kaleshwar Prasad Sharma case (supra), no such judicial order passed by Hon'ble Division Bench was operative. Here in the present case, the LPA order which was passed in case of the petitioner, become operative and, therefore, the plea which the petitioner is taking, is not available to him, and hence, in this background, the



present writ petition is hereby dismissed.

26. With the aforesaid observations and directions,
the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.04.2025.
Transmission Date	N/A

