

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1296 of 2023
In
Civil Writ Jurisdiction Case No.20662 of 2012**

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1. The State of Bihar through the Principal Secretary, Department of Water Resources Government of Bihar, Patna.
 2. The Engineer-in-Chief, Middle Department of Water Resources, Government of Bihar, Patna.
 3. The Executive Engineer, Gandak Design Division No. 1, Motihari.

... .. Appellant/s

Versus

Nisar Ahmad Khan, son of Abdul Hai Khan, resident of Mohalla-Baheri Sheikh Toli, P.O. P.S. District-Balia, State U.P. posted as Junior Engineer, Under Gandak Design Division No. 3, Motihari, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Ranjan, Advocate
For the Respondent/s : Mr. Arun Kumar, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 20-01-2025

Re.- I.A. No. 1 of 2023

Mr. Alok Ranjan, learned Advocate for the appellant/applicant presses I.A. No. 1 of 2023 for condoning the delay of 64 days in preferring this appeal.

2. For the reasons stated in the application, the delay of 64 days in preferring this appeal is condoned.



3. I.A. No. 1 of 2023 stands allowed.

Re : LPA No. 1296 of 2023

4. We have heard Mr. Alok Ranjan, the learned Advocate for the appellant/State and Mr. Arun Kumar, the learned Advocate for the respondent.

5. The respondent stood dismissed in a departmental proceeding initiated against him.

6. On perusal of the entire records, the learned Single Judge found out that in the domestic inquiry, no procedure was followed. The complainant had not been examined nor anyone of the officials had been cited and examined in support of the allegation against the respondent relating to demand and acceptance of illegal gratification.

7. The Superintendent of Police, Vigilance, who had made the allegation against the respondent, was also not cited as a witness and therefore the allegations could not be proved. It was found to be a serious lacuna, violating the principles of natural justice.



8. We find from the order that the learned Single Judge contemplated of remanding the case to the Disciplinary Authority but he took into account that the allegation related back to about two decades and the respondent would have long retired from service.

9. Considering this aspect of the matter, it appears that the learned Single Judge, in view of the serious allegation against the respondent regarding demand and acceptance of illegal gratification and with a desire to put a quietus to such litigation, found it best to remand the matter to the Disciplinary Authority but with an observation to convert the order of dismissal dated 11.10.2011 to that of compulsory retirement from the date he was dismissed from service and to settle his retiral benefits as if he had retired from the date of dismissal. If any re-fixation of pay with reference to revision and consequential benefit, if any, as on the date of dismissal, was also directed to be calculated and based on such re-fixation of pay, the pension of the



respondent was directed to be fixed within a stipulated period of time.

10. While saying so, the learned Single Judge was also conscious of the fact that he had modified the penalty only for the reason of giving a quietus to the litigation and not acting as an appeal against the order, especially with respect to the sentencing.

11. The learned Single Judge also took note of the parallel proceeding in the criminal side which was reported to be pending.

12. However today, the learned counsel for the respondent has informed this Court that the criminal case against him has ended in acquittal.

13. Considering this aspect of the matter, we do not intend to interfere with the order passed by the learned Single Judge.

14. However, Mr. Alok Ranjan, the learned Advocate for the State has pointed out that some remarks were made against the Additional Chief



Secretary, Water Resources Department, Government of Bihar in the order and a general observation was made about the apathetic and lackadaisical approach of the bureaucrats in general in the State of Bihar, which was not warranted.

15. In support of the aforesaid contention, it has been pointed out that on 05.07.2023, the learned Single Judge had directed the Principal Secretary, Water Resources Department to file his personal affidavit after going through the inquiry reports as to whether the respondent had been provided the article of charge along with the statement of imputation, list of documents, list of witnesses or not. Certain other directions were also issued regarding the contents of such affidavit which would be filed by the Principal Secretary, Water Resources Department.

16. When the matter came up before the learned Single Judge for consideration, the post of the Principal Secretary, Water Resources Department had



become vacant and therefore the Additional Chief Secretary, Water Resources Department, swore the affidavit.

17. This was not appreciated by the learned Single Judge who deprecated the practice of another officer swearing the affidavit.

18. We find that such comments were not called for, especially when the post of Principal Secretary, Water Resources Department, Government of Bihar was vacant and the Additional Chief Secretary of the same Department had sworn the affidavit.

19. Any general observation about the working of the bureaucracy in general, in our view, is not called for in judicial orders, especially when no opportunity is given to the erring official/ officials to explain his/ their cause.

20. For the aforesaid reason, we expunge the remark made against the Additional Chief Secretary and the bureaucracy in general in the aforementioned order dated



17.07.2023.

21. The appeal stands disposed of accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Rajesh/Harsh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.01.2025
Transmission Date	

