IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.199 of 2025
In
Civil Writ Jurisdiction Case No.11409 of 2013

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1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Additional Secretary, Road Construction Department, Bihar, Patna.
4. The Special Secretary, Road Construction Department, Bihar, Patna.

... ... Appellant/s

Versus

Ramyati Singh S/o Shri Brahmdeo Singh, R/o Mohalla-Rajbanshinagar, Road No. 2 Extension, Police Station-Shastrinagar, District-Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P. K. Shahi, AG Mr. Gyan Prakash Ojha, GA-7 Mr. Abhishek Singh, AC to GA-7
For the Respondent/s	:	Mr. Bindhyachal Singh, Sr. Adv. Mr. Suresh Kumar, Adv. Mr. Arbind Kumar, Adv. Mr. Akash Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-02-2026

This Letters Patent Appeal has been filed by the State challenging the order dated 29-7-2024 of the learned Single Judge passed in C.W.J.C. No. 11409 of 2013. The writ-petitioner filed the writ petition with the following prayers:-

> *"(I) For issuance of an appropriate writ to quash the order issued under the signature of the Special Secretary, Road Construction Department, Bihar, Patna whereby and*

whereunder he has rejected the review application preferred by the petitioner vide memo no.8069 dated 20.07.2012.

(ii) For issuance of an appropriate direction to quash notification bearing memo no.14768(S) dated 21.10.2010 whereby and whereunder the Additional Secretary, Road Construction Department, Bihar, Patna while concluding the departmental proceeding under Rule 43(b) of Bihar Pension Rules deducted five percent amount of pension permanently from the petitioner and consequently order issued under the signature of the Deputy Secretary whereby and whereunder in the light of the aforesaid departmental notification five percent amount of pension be deducted from the date of starting pension from the petitioner vide memo no.15821(s) dated 24.11.2010.

(iii) For issuance of an appropriate direction to restore full pension to the petitioner.

(iv) For passing such other order or orders for which the petitioner is entitled under the law and in the facts and circumstances of the case."

2. It is the case of the writ-petitioner that he was superannuated from the post of Executive Engineer, Road Construction Department, Road Division, on 31.12.2007. While he was posted as the Executive Engineer, R.E.O., Works Division, Patna, a tender was invited for repair works of Lodipur–Sadispur road in 2nd Kms. from 700 ft. to 1400 ft. for

the period 1998-1999. For execution of the repair work an agreement was executed with the contractor and the estimated amount of the work as per the agreement was fixed to the tune of Rs.1,05,363/-. The date of completion of work was prescribed as 31.03.1999. Subsequently, the Special Officer-cum-Deputy Secretary, Road Construction Department, Bihar, Patna, issued resolution that a departmental proceeding against the petitioner will be initiated under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "the 2005 Rules") for alleged irregularities committed during his posting under the R.E.O. Works Division, Patna, vide Memo dated 12.04.2007. The memo of charge was served upon the petitioner and there were three charges formulated, which read as follows:-

> "(i) the agreement for the aforesaid repair work was executed without administrative approval/allotment of fund from the c ompetent authority rather approval from Works the Superintending Engineer, Circle, Patna was obtained and agreement was executed for the said work on 19.03.1999 of Rs.1,05,363/-
> (ii) tender notice was not published in the. Newspaper, and
> (iii) the work was measured by the Junior Engineer on 31.03.1999 and the bill was prepared for Rs. 74,393/- which was not checked by the answering respondent (Annexure-2 to the writ

petition).”

3. It is the further case of the petitioner that for the self-same irregularities, a departmental proceeding was also initiated against the Superintending Engineer and Assistant Engineer of R.E.O. Works Division, Patna, along with the petitioner and they have been exonerated of the charges levelled against them. The petitioner also submitted his reply before the Enquiry Officer and it was contended that there was no need for any administrative approval for small and petty repair works and Rs. 5 lakhs fund was allotted for the work vide departmental letter dated 06.08.1998. So far as the second charge is concerned, it is stated that after making signature of the Executive Engineer on the letter relating to the Notice Inviting Tender, the same was sent to Division’s Correspondence Section and duly mentioned it on the issue Register. Further the tender in question has been placed before the petitioner for his recommendation after the same was forwarded by the Estimating and Accounts Officer; thereafter, the same was forwarded to the Superintending Engineer for final disposal.

4. So far as the wide circulation of the tender is concerned, it was stated that the work of Rs. 5 lakh was distributed among the three contractors in healthy competition. As far as the 3rd charge is concerned, the bill of Rs. 74,393/- was

prepared and it was entered into the Measurement Book, which was never placed before the petitioner's entire tenure upto 31.05.2000 for 'Check and Pass' order.

5. The Departmental Inquiring Officer, after considering the reply of the petitioner, held that all the three charges were not established and recommended for exonerating him from the charges. However, the Disciplinary Authority issued second show cause notice while differing from the reasons of the Inquiring Officer in respect of charge no.2 only, regarding non-performance of the wide circulation of the tender through newspaper, and the petitioner was asked to submit his reply within fifteen days on the said charge.

6. In pursuance thereof, the petitioner submitted his reply within time and stated that the tender notice was kept by the Estimating Section of the Division where the Employee/ Estimator/Estimating Officer were posted, and if the tender was not published in the newspaper before one week from the date fixed for the tender then the tender would be postponed. In the instant case, neither the date of tender has been extended nor the tender has been postponed.

7. Further stand has been taken that the final decision was taken by the Superintending Engineer after verification of the press publication in the newspaper and that press publication

is not available in the office of the R.E.O. Works Division, Patna. It is further contended that the contractor filed a writ petition for payment of the outstanding dues and accordingly this Court directed for the payment of dues in favour of the contractor. Aggrieved, the State preferred LPA No. 638 of 2007, which came to be disposed of directing the payment to be made to the contractor and accordingly the payment was made.

8. The case of the petitioner is that the decision of the respondent no.3 regarding deduction of 5% amount of pension permanently from the petitioner while concluding the departmental proceeding under Rule 43(b) of Bihar Pension Rules was not justified. The petitioner, aggrieved by the order of the Additional Secretary, Road Construction Department, Bihar, Patna, preferred a review before the Hon'ble Minister, Road Construction Department, Bihar, but the same was rejected vide order dated 02.07.2017 by the Special Secretary, Road Construction Department, Bihar, Patna. The impugned order deducting 5% pension is said to be not sustainable in the eyes of law and contrary to the provision of Bihar Pension Rules, 1950 as no pecuniary loss was caused to the State Government.

9. The Deputy Secretary, Road Construction Department, Government of Bihar, filed the counter affidavit, wherein it was stated that there was every justification for

passing such order.

10. The petitioner filed his reply to the counter affidavit filed by the respondent no.4.

11. The learned Single Judge, after hearing the parties, held as follows:

> “6. Having heard the rival submissions made on behalf of the parties, as well as, the fact that the allegation which has been levelled against the petitioner is in respect of procedural difficulty in making payment to the contractor after completion of the work. The Division Bench in L.P.A. No. 638 of 2007 after recording that the work was completed which is supported by bill raised by the contractor, had not found any fault in the order passed by learned Single Judge, who had directed the respondents to make payment of a sum of Rs.74,393/- out of the total work for Rs.1,05,363/-. The authorities having admitted that the work has been completed as per the contract entered into by the petitioner on behalf of the State Government, who was posted at the relevant time as the Executive Engineer cannot be faulted for having acted against the law. A reference of PWD code would make it more clear that in respect of any work completion, the same is entered into the measurement book and payments have to be made on the said basis. Mere procedural lapses on part of the petitioner cannot constitute misconduct. The authorities have not

taken any action in respect of the two other delinquent employees who have been exonerated about which the petitioner has made a specific statement in paragraph no.9 of the writ petition, which has not been denied by the respondents. I don't find any reason that any loss was caused to the State.

7. The law in respect of interference by this Court is well settled by the Apex Court in the case of B. C. Chaturvedi Vs. Union of India & Ors. reported in (1995) 6 SCC 746 stating therein that in the case of penalty order, Article 21 of the Constitution of India is attracted and in view of the interdependence of the fundamental right, the punishment/penalty awarded to be reasonable and if it be unreasonable, Article 14 of the Constitution would be violated, however, for the self-imposed limitation while exercising power under Section 226 of the Constitution of India, I find it proper to direct the Disciplinary Authority/Appellate Authority to re- consider the penalty imposed and pass appropriate punishment order with cogent reason.

8. I am of the opinion in light of the aforesaid reason, the impugned order dated 21.10.2010, passed by the Additional Secretary, Road Construction Department, Patna; order dated 24.11.2010 passed by the Deputy Secretary, Road Construction Department, Bihar and revisional order dated 20.07.2012 passed by Special Secretary, Road Construction Department, Bihar,

> Patna, as contained in Annexures 8, 9 and 11 respectively are hereby set aside and quashed for the aforesaid reason."

12. The learned Advocate General, challenging the impugned order passed by the learned Single Judge, contended that the writ-petitioner has deliberately violated the prescribed procedure for publication of tender and allotment of work in the newspaper and thereby a grave misconduct was caused by the writ-petitioner. It was further argued that the quantification of loss caused to the State is not a criteria for constituting a misconduct which has not been appreciated by the learned Single Judge. The observation of the learned Single Judge that it was a mere procedural lapse on the part of the petitioner and it cannot constitute misconduct, is not at all justified.

It is further argued that the two delinquents who were the Superintending Engineer and Assistant Engineer have been let off without punishment in the disciplinary proceeding, cannot be a ground to take a liberal view on the petitioner, who was the Executive Engineer and has got a vital role in the publication of tender and therefore the impugned order is liable to be set aside.

13. The learned counsel for the respondent, on the other hand, submitted that there is no dispute that the work in question has already been done and the payment has been made

as per the direction of this Court and the petitioner has retired since long and he is now aged about 80 years. Further the State has not come up with any case that there is any other kind of misconduct on the part of the respondent during his entire service career, and therefore a liberal view should be taken in the matter.

14. Rule 158 of Bihar P.W.D. Code, which deals with tenders, states that tender must be obtained for all works which are proposed to be given on contract unless the amount is Rs. 20,000 or less. So far as the manner of floating of tender is concerned, it is elaborately dealt in Rule 159, which is quoted hereinbelow:-

> **“[159.** Tenders, which should-always be sealed, shall invariably be invited in the most open and public manner possible by advertisement on the Internet through official web-sites in the newspapers having wide circulation in the area and by notice in English or in Hindi posted in public places. For any work of more than Rs. 1,00,000/- publication of tender notice in newspapers and/or internet is mandatory. To save costs in advertisement there could be a short notice having important information in newspapers which should have information about as to where detailed Information can be obtained, which could be in the office and/or available on the official web-sites on the internet. The

intending participants should in all cases have prior knowledge about:-

(i) detailed criteria for shortlisting the participants.

(ii) The form in which the tender should be presented

(iii) When and where the sanctioned estimate, specifications, drawings or plans, conditions and clauses of contract and other contract documents can be seen, and the blank form of tender obtained.

Whether any material will be supplied departmentally and if so the rate at which and the place where if should be supplied,

(iv) The place where, the date on which and the time when tenders are to be submitted and are to be opened. Normally it should not be less than 10 days in case of emergency, the time period can be reduced as per requirement with the prior approval of the concerned Superintending Engineer.

(v) The amount of earnest money to accompany the tender and the amount and nature of the security deposit required in the case of accepted tender.

The tender notice should also stipulate that contractors submitting tenders should furnish Income-tax, and Sales-tax clearance certificates along with it.

(vi) The designation of the authority that will accept the tender. Authority should always be reserved to reject any or all of the tenders so received without the assignment of a reason and this should be expressly stated in the notice.

(vii) The time of completion of the work according to the nature and urgency of the work. In exceptional cases only, time extension can be allowed by the Public Works Department itself only.

All this information can be given in the short notice and/or detailed information to be supplied from the office and/or through official websites on the internet."

15. Even though the writ-petitioner has taken a stand that the tender was floated, but no documentary proof has been brought on record or substantiated to that effect. Therefore, it is a case of no tender; although, the amount of the work justifies the floating of the tender as per the said two provisions i.e. Rule 158 and Rule 159 of Bihar P.W.D. Code.

16. The learned Advocate General has placed reliance in the case of **Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and Another v. Rajendra Singh, reported in (2013) 12 SCC 372**, wherein the Hon'ble Supreme Court has been pleased to hold as follows:-

"**19.** The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and

> the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

17. It is the contention of the learned Advocate General that there is no finding of the learned learned Single Judge that the punishment which was imposed on the writ petitioner was shockingly disproportionate to the nature of the charges framed against him; therefore, the Court should not have remitted the matter back to the authority to pass appropriate order on the quantum of punishment.

18. Upon perusal of the impugned order, we find that the work in question pertains to the year 1998. There is no dispute that the said work was duly executed and recorded in the Measurement Book, and payment was released in terms of the order passed by this Court. It is true that, considering the quantum involved, a tender ought to have been floated in accordance with the specific statutory provision, which was admittedly not complied with in the present case. However, taking into account the fact that the writ-petitioner has already retired from service; there are no other allegations against him in

his service career and he has been exonerated of other two charges and now he is aged about 80 years and he has retired from service for nearly 19 years, we are of the considered view that, in the interest of justice, the direction for permanent deduction of 5% from his pension requires modification. Accordingly, the deduction of 5% from the pension shall be restricted to a period of ten (10) years from the date of retirement, instead of being imposed permanently.

19. Subject to the aforesaid modification, the instant LPA stands disposed off.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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