

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1120 of 2024

In
Civil Writ Jurisdiction Case No.13706 of 2023

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1. The State of Bihar
 2. The Additional Chief Secretary, Water Resources Department, Bihar, Patna.
 3. The Deputy Secretary, Water Resources Department, Bihar, Patna.
 4. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Bihar, Patna.
 5. The Executive Engineer, Punpun Flood Protection Division, Anisabad (Patna).

... .. Appellant/s

Versus

1. Chandra Kishore Sharma, son of Late Ramagya Sharma, Resident of Village-Mahuli (East Parsa Bazar), P.S.- Parsa Bazar, District-Patna.
2. The Accountant General Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Singh (SC to GA -2)
For the Respondent/s	:	Mr. Chandra Kishore Sharma (In Person)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 09-04-2026

Heard learned counsel for the parties.

2. The present *intra court* appeal has been preferred under Clause 10 of Letters Patent of Patna High Court Rules, against the order dated 10.09.2024 passed by the learned Single Judge in CWJC No. 13706 of 2023, whereby the writ petition was allowed, and the appellants were directed to restore the pension of the respondent No. 1 (writ petitioner).



3. The brief facts of the case are that the writ petitioner was appointed as a *Mapak* in the year 1987, and continued to discharge his duties on the said post. However, in the year 2000 the writ petitioner was terminated *vide* Letter No. 2745 dated 11.02.2000 issued by the Director, Land Acquisition and Rehabilitation, Patna. Aggrieved by the said termination, the writ petitioner challenged the same before this Hon'ble Court in CWJC No. 603 of 2001, which was allowed on 16.01.2001, and the termination order was quashed.

4. In the meantime, the appellants issued a second show cause notice *vide* Letter No. 971 dated 31.05.2001, which was again challenged by the writ petitioner in CWJC No. 9031 of 2001. Further, for non-compliance of order passed in CWJC No. 603 of 2021, the writ petitioner filed MJC No. 2934 of 2001.

5. During the pendency of the writ petition and the contempt proceedings, the appellant authorities reinstated the writ petitioner in service with effect from the date of termination and also sanctioned payment of salary and other consequential benefits. The appellants claim that such compliance was with a condition that it would depend on final outcome of CWJC No. 9031 of 2001. Further, in view of such compliance of the



Court's order dated 16.01.2001, the contempt petition was dismissed.

6. Thereafter, the writ petitioner continued in service without any interruption and retired on 30.11.2018, after attaining the age of superannuation. The writ petitioner was also granted all post-retiral benefits, including full pension and gratuity *vide* office order dated 05.10.2018.

7. In CWJC No. 9031 of 2001 and other analogous cases this High Court had granted status quo *vide* order dated 22.11.2004, in light of a pending SLP before the Hon'ble Supreme Court. The said SLP (SLP 7233-7235/2003 registered as Civil Appeal No. 5682-5684/2004) was dismissed on 01.07.2006. Further, another Civil Appeal No. 3431 of 2017, having consequences on the present case was dismissed on 28.11.2022. After this, CWJC No. 9031 of 2001 was dismissed as withdrawn *vide* order dated 21.02.2023.

8. Thereafter, on 01.06.2023, the departmental authorities issued a show cause notice for stopping payment of pension treating the writ petitioner's service illegal. The writ petitioner submitted his reply and a final order was passed on 12.08.2023 withholding his entire pension.

9. The learned Single Judge, after hearing the parties



and upon consideration of the materials available on record, held that once the petitioner had retired, the employer-employee bond had ended, and the departmental proceeding held thereafter could not said to be sustainable in the eyes of law. The relevant paragraphs of the said order are reproduced as under:

“12. Coming to the impugned order as contained in Annexure-13, this Court finds that while terminating the service of the petitioner, the respondent no. 4 did not even take pain to consider the explanation of the petitioner and has only given a finding that explanation submitted by the petitioner is found to be not acceptable without assigning the reason for non- acceptance. This Court also finds that the impugned order has been passed at the behest of or in compliance with the letter No. 2681 dated 01.06.2023 issued by the Water Resources Department. Thus, absolutely there is no independent application of mind, which is sine qua non while dispensing the services of the petitioner causing civil as well as evil consequences. Thus, the impugned order suffers from the vice of the arbitrariness, apart from complete violation of the principles of natural justice.

13. The withdrawal of the C.W.J.C. No.9031 of 2001 which was preferred only against the show cause notice issued by the Department and even if it stood dismissed as withdrawn, it would how affect the right of the petitioner to continue in service and getting all the benefits is quite surprising. In the earlier round of litigation, the order of termination stood quashed and duly affirmed by the Division Bench with only observation to continue the proceeding in accordance with law. It is also not disputed that the petitioner has not discharged his service to the satisfaction of the authorities concerned. Once the service of the petitioner has been utilized by the Department without there being any condition and even for the sake of argument it is taken note of the fact that the order of status quo was granted by the Court in C.W.J.C. No. 9031 of 2001, that was only with respect to the continuance of the proceeding based upon a show cause notice subject to



final outcome of S.L.P. No. 7233-7235/2003 which came to be dismissed on 11.07.2006 in the light of Uma Devi (supra). The respondent authorities had the liberty to get the order of status quo modified in the light of the subsequent development and to proceed further but the same has not been done and allowed the petitioner to superannuate. Once the petitioner superannuated and the reitral benefits and the pension have been accorded; there is complete severance of the bond of employee and employer relationship and no cause of action exists for continuance of the departmental proceeding by the efflux of time, that too without following any procedure.

14. In the aforesaid facts and circumstances, the impugned order causing termination of the service of the petitioner as contained in Memo No. 2637 dated 12.08.2023 is held to be wholly unjustified, perverse and illegal and not sustainable in the law; accordingly the same stands set aside. The consequential order, as contained in Memo No. 1567 dated 16.08.2023, issued by the respondent no. 5, is also hereby set aside. The respondent authorities are directed to restore the pension of the petitioner forthwith within a period of four weeks from the date of receipt/production of a copy of this order. The petitioner shall also be entitled to get an amount of Rs.20,000/- as litigation cost.”

10. Learned counsel for the appellants submits that the initial appointment of the writ petitioner in the year 1978 itself was illegal. When the writ petitioner was reinstated in the service it was done on a condition that it would be subject to the final outcome of CWJC No. 9031 of 2001. Learned counsel further submits that in meantime the Hon'ble Court tagged CWJC No. 9031 of 2001 and other analogous cases with Civil Appeal No. 3431 of 2017 with a view that it will be affected by the order /Judgment of the said case.



11. The counsel therefore submits that, by virtue of order dated 28.11.2022 passed in Civil Appeal No. 3431 of 2017, the writ petitioner has no claim left and his appointment itself would be considered illegal. As such, the authorities had correctly exercised their powers and passed the order dated 12.08.2023, and 16.08.2023. Learned counsel further submits that the writ petitioner withdrew CWJC No. 9031 of 2001, even after he had knowledge of order dated 28.11.2022 passed by the Hon'ble Supreme Court.

12. Learned counsel for the respondent no.1 (writ petitioner) submits that the learned Single Judge has rightly passed the impugned order after considering the facts and circumstances of the present case. As such, the order of the learned Single Judge requires no interference by this court. Learned counsel further submits that the respondent withdrew CWJC No. 9031 of 2001, as after his retirement the writ petition had become infructuous.

13. The limited issue for consideration before us is that whether the departmental proceeding against the writ petitioner after his superannuation was justified in the present facts and circumstances of the case.

14. Upon perusal of materials on record, it is evident



that the writ petitioner had superannuated from service in the year 2018 itself. For more than four years the writ petitioner continued to receive the retiral benefits including pension. Thereafter, in light of the order dated 28.11.2022, the appellant-authorities considering the appointment of the writ petitioner illegal, passed the order of stopping the pension on 12.08.2023.

15. We fail to understand how the authorities could determine the legality of appointment of the writ petitioner, almost five years after his superannuation. The writ petitioner discharged his services satisfactorily till his superannuation, and no objections have been made in this regard.

16. Also, the writ petitioner continued getting his retiral benefits for more than four years after his superannuation. With his superannuation the employer-employee relationship came to an end, and therefore continuance of departmental proceeding under Service Rules is not permissible. The authorities could have initiated action against the writ petitioner under the Pension Rules, but they have not done so in the present case. The learned Single Judge has rightly dealt with the same in the impugned order. The relevant paragraph is reproduced as under:

“10.Once an employee is allowed to superannuate



unconditionally and all the retiral benefits and other dues have been sanctioned and when the employee is getting regular pension, the tie between the employer and employee would automatically severed; in absence of any pending departmental proceeding. Thus, in the opinion of this Court, the only remedy which had left with the State respondent authorities was the procedure available under the Bihar Pension Rules, 1950 but the same has not been done. The termination of the service of an employee after retirement is unknown to the legal jurisprudence in absence of any departmental proceeding on mere show cause notice. Once the relationship of the employer and employee comes to an end, there is no question of termination of service of an employee, that too on the ground that his initial appointment was bad in law. The delinquent employee would be deemed to be in service, although he has reached the age of superannuation, only if a valid departmental proceeding had been initiated. The departmental proceeding can not be said to be initiated merely on issuance of a show-cause notice. It is initiated only when a charge-sheet is submitted.”

17. As such, we are of the view that the impugned action of the appellant-authorities was bad in law, and has been rightly set aside by the learned Single Judge. The appellants in the present case have been unable to substantiate the grounds of the appeal, and have not dislodged the findings of the learned Single Judge.

18. The scope of a Letters Patent Appeal is very limited, and in absence of any cogent reasons the court would not interfere with the order passed by the Writ Court. It is a well settled principle that merely because another view is possible, the court should not interfere with the order of the writ court. In



the present case, the appellant-authorities have been unable to show any illegality or perversity in the order of the learned Single Judge. The impugned action of the authorities after almost five years of writ petitioner’s superannuation cannot said to be sustainable in law.

19. In view thereof, this Court finds no illegality or infirmity in the order passed by the learned Single Judge. The order of the learned Single Judge is affirmed, and the observations and the directions made therein shall follow.

20. Accordingly, the present *intra court* appeal stands dismissed.

21. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

Rajiv/Sujit

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