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**(2008) 08 PAT CK 0170**  
**In the Patna High Court**  
**Case No : CWJC No. 14339 of 2005**

Shyam Kishore Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 06-08-2008

**Acts Referred:**

Bihar Pension Rules, 1950 — Rule 43(b)

**Citation :** (2009) 1 PLJR 278

**Hon'ble Judges :** Mridula Mishra, J

**Bench :** Single Bench

**Advocate :** Rupak Kumar and Nishant Kumar, for the Appellant; Rashul Haque and J.P. Karn, for the Respondent

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## Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioner and the State. The petitioner has superannuated from the office of the Executive Engineer, Field Survey Division, Advance Planning Road Construction Department, Gaya on 31.1.2004.

2. This application has been filed for directing the respondents to make payment of salary for the period 25.10.2000 to 5.6.2002, i.e. the period when the petitioner was under suspension payment of remaining 10% of pension, revised leave encashment, revised gratuity with statutory interest and for calculating the period of suspension for determination of retirement benefits.

3. The petitioner was appointed as Junior Engineer in the year 1973 in Road Construction Department, Govt. of Bihar and posted in Rural Engineering Organization, Gaya, from 31.3.1973 to 31.3.1979. While posted in Rural Engineering Organization, Sherghati, he was placed under suspension vide office order No. 440 dated 25.10.2000 in contemplation of a departmental proceeding. His headquarter was fixed at Patna in the office of the Engi-neer-in-Chief, Road Construction Department, Bihar, Patna. The departmental proceeding was initiated under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930 vide order dated 7.6.2001, for irregularities committed during

1998-99, while posted at Sherghati. The Conducting Officer submitted his enquiry report on 26.7.2001 but no order was passed in the departmental proceeding. The suspension of the petitioner was revoked by an order dated 6.6.2002 and he was directed to join in the office of the Engineer-in-Chief-cum-Additional Comrnis-sioner-cum-Special Secretary, Road Construction Department, Patna. While working there the petitioner superannuated on 31.1.2004. The departmental proceeding in which enquiry report had already been submitted, remained unconcluded. The petitioner submitted his application in prescribed Proforma for payment of pension and pensionary benefit and for salary of suspension period. He also filed an application for closing the departmental proceeding. The petitioner's representation remained pending for consideration. He was paid 90% provisional pension, for fixing pension and pensionary benefit his period of service for the suspension period from 25.10.2000 to 5.6.2002 was excluded and not considered as a result even 90% provisional pension was less than what should have been fixed.

4. The departmental proceeding remained unconcluded was converted in a proceeding under Rule 43(b) of the Pension Rules. Even that proceeding is unconcluded and on pretext of pendency of departmental proceeding petitioner is not being paid his legal dues.

5. Counter affidavit had initially been filed on behalf of respondents No. 1, 3 and 7 in which it has been stated that admissible retiral dues have been paid to the petitioner. Regarding the prayer of the petitioner relating to assured career promotion it has been stated that till now it has not been paid to any one junior to the petitioner. So there is no question of denial of the benefit to the petitioner. In this counter affidavit, there was no specific averment regarding conclusion of the departmental proceeding and no whisper that by which time the respondents are expecting that the departmental proceeding will conclude. In the first counter affidavit filed in the year 2006, it was stated that the departmental proceeding is under active consideration.

6. Today a supplementary counter affidavit has been filed in which also same statement has been reiterated. In paragraph 6 of the supplementary counter affidavit, it has been stated that since the criminal case has also been instituted against the petitioner as Sherghati P.S. Case No. 127/99 as such pension and pensionary benefits is not being finalized. There is no statement regarding the present status of criminal case.

7. The learned counsel for the petitioner has informed the court that till date no charge-sheet has been submitted in the criminal case and after institution of Sherghati P.S. Case No. 127/99, there is no further progress in the case. Regarding conclusion of the department proceeding, there is complete silence in the supplementary counter affidavit.

8. I fail to understand, when the enquiry report had been submitted by the Conducting Officer in 2001, why the departmental proceeding remained

unconcluded and even after seven years of the submission of the enquiry report it is still unconcluded. No explanation has been submitted either in the counter affidavit or supplementary counter affidavit explaining the delay in concluding the departmental proceeding.

9. Learned counsel for the State has drawn my attention towards paragraph 7 of the supplementary counter affidavit and submitted that on account of pendency of the criminal case, the departmental proceeding is being delayed. This statement on behalf of Respondents cannot be accepted, considering the settled law that pendency of criminal case cannot be a ground for not concluding any departmental proceeding. Criminal proceeding is completely a different and independent proceeding and its pendency cannot be treated as bar for holding a departmental proceeding.

10. Learned counsel for the petitioner has placed reliance on a decision reported in State of Andhra Pradesh Vs. N. Radhakishan, . This decision is fully applicable to such departmental proceedings which has remained unconcluded for long time without explaining the delay. The essence of the finding of Apex Court is that while considering the prayer of delinquent for quashing a departmental proceeding the court has to take into consideration all relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. In paragraph 19 it has been held as follows:-

"The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice."

11. Considering all relevant factors, I find that the case of this petitioner is fully covered by this decision. The respondents have not explained the delay. This delay has caused injustice to the petitioner who has superannuated in 2004 and till date his pension has not been fixed, pensionary benefit not paid to him, only on this plea that the departmental proceeding is going on against him. This is a fit case in which the entire departmental proceeding needs to be quashed. The proceeding initiated vide Annexure-1 and subsequently converted into a

proceeding u/s 43(b) of the Bihar Pension Rule vide Annexure-8 dated 7.12.2004 is quashed.

12. Respondents are directed to calculate full pension of the petitioner taking into consideration the period of suspension as period of service. The petitioner should be paid his arrears of salary for the period of suspension. All consequential benefits such as revised leave encashment and revised gratuity must be paid to the petitioner within three months from the date of receipt/communication of this order. Benefits accruing out of Assured Career Promotion should also be paid to the petitioner. This writ application stands disposed of with the aforesaid observations.