

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6178 of 2000

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1. Dalsa Devi (wife)
 2. Krishna Kumar Singh (Son)
Both residents of Jamunapur, P.O. Kateya, P.S.- Bihta, District- Patna
 3. Ruptara Devi (Daughter), wife of Suresh Singh, resident of village + Post-
Nawada Ven, P.S. Udwantnangar, District- Bhojpur
 4. Tanuja Devi (Daughter), wife of Surendra Singh, resident of village- Haibatpur,
P.O. Rampur Chauram, P.S. + District- Arwal
 5. Rakhi Devi (Daughter), wife of Santosh Singh, resident of village + P.O. + P.S.
Ramjeechak, Digha, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. The Director, Agriculture, Govt. of Bihar, Patna
3. Deputy Director Agriculture (Information), Mithapur, Agriculture Farm,
Bihar, Patna

.... Respondents

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Appearance :

For the Petitioners	:	M/s. Mrigank Mauli, Samir Kumar, Saket, Sanjay Kumar, Advocates
For the State	:	M/s. Ashok Kr. Keshri, A.A.G. XI, Ratna Deep Prasad, A.C. to A.A.G. XI

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-07-2015

I have heard the parties and perused the records of this case.

This writ application has been filed *inter alia* for following reliefs:-

“A. For issuance of a writ in the nature of Certiorari to quash the office order bearing no.37 dated 15.2.2000 issued under the signature of one Sri Brahmdeo Prasad, Deputy Director, Agriculture (Information) Directorate of Agriculture, Bihar, Patna as contained in Annexure-7 to this petition whereby the petitioner a Cinema Operator has been terminated from service on the ground of his

continuous absence without any information under the provision of Rule 76(I) of the Bihar Service Code.

B. To grant any other relief/reliefs to which the petitioner is found entitled to in the facts and the circumstances of the case.”

A short question has been raised on behalf of the petitioner at the time of hearing that the impugned order dated 15.02.2000, as contained in Annexure 7, is in teeth of the law laid down by the Division Bench of this Court rendered in **Sobhana Das Gupta V. the State of Bihar and another [A.I.R 1973 Patna 431]** and **Smt. Pravabati Sengupta Vs. the State of Bihar and others [1989 PLJR 485]**.

The original petitioner (since deceased) claimed to have appointed as Cinema Operator in the Directorate of Agriculture Bihar, Patna having joined the post on 15.04.1971 and continued to work till 10.09.1991. Thereafter, the petitioner claimed that he remained absent from duty since 11.09.1991 till 05.10.1998 due to mental disorder and had remained under treatment of different doctors during that period. It is also stated that during that period, the petitioner had written a letter on 24.02.1993 to the respondent no.3, Deputy Director Agriculture (Information), Mithapur, Agriculture Farm, Bihar, Patna indicating that he is incapable to resume his duty due to mental ailment and, as such, he further requested to treat him as retired



employee and to allow pensionary benefit, however, no action was taken. Petitioner has further stated that during period of absence, he was admitted to Ranchi Institute of Neuro Psychiatry and Allied Science at Kanke and lastly, when the Medical Superintendent of Hospital at Kanke gave him fitness certificate (Annexure 1) that he is fit to resume his duty, he submitted his joining on 06.10.1998 vide Annexure 2, however, he was not allowed to join. A letter was written by the Deputy Director Agriculture (Information) to the Director, Agriculture on 09.10.1998 in this regard which stands appended as Annexure 3. The petitioner gave representations to the respondent nos.2 and 3 for accepting his joining, however, he was not allowed to join on the ground that he had remained absent unauthorizedly for a period more than five years and, finally, vide the impugned order contained in Annexure 7, a decision was taken to terminate his services in terms of Rule 76(1) of the Bihar Service Code with effect from 11.01.1991 i.e., the date from which he had remained absent.

Learned counsel appearing for the petitioners has submitted that the action of the respondent authorities is in teeth of the law laid down by decision of the Division Bench in **Sobhana Das Gupta (Supra)**. From perusal of the aforesaid, it appears that provision of Rule 76 so far it concerns the automatic cessation of service as a consequence of continuous absence from duty without



leave for five years from service has already been struck down being invalid. The matter has again been considered by another Division Bench of this Court in **Smt. Pravabati Sengupta** (Supra). It has been held that government servant, even on account of five years of absence, can only be terminated from service after following the procedure laid down in the Civil Service (Classification, Control & Appeal) Rules and the Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935.

A counter affidavit has been filed on behalf of the respondent no.3 taking a ground that the petitioner had remained absent from duty for more than five years continuously since 11.01.1991, therefore, his service has rightly been terminated.

Considering the law laid down by the Division Bench declaring the aforesaid Rule 76(1) to be invalid, in my opinion, the authorities could not have passed the impugned order of termination/removal. There is no averment in the counter affidavit that any proceeding was initiated against the petitioner either under Civil Service (Classification, Control & Appeal) Rules or the Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 and, as such, the impugned order is not sustainable in eyes of law. Accordingly, Annexure 7 is quashed and set aside.

During the pendency of the writ petition, the original

petitioner had not only attained the age of superannuation but he died also in the year 2009 itself and, thereafter, his legal heirs and legal representatives are pursuing the writ petition. The effect of this order would be that it shall be deemed that the original petitioner had continued in service till the attaining age of his retirement. However, since the original petitioner has not worked for all these years, it will be open to the State Government to examine as to what was salary or other emoluments, the petitioner would have last drawn on the eve of his retirement for the purpose of fixing his retiral benefits including pension etc, if the petitioner, being the Cinema Operator, was entitled for pension and other retiral benefits. Let such step be taken by the State authorities within a period of three months from the date of receipt/production of a copy of this order and, whatever amount is found to be due, be paid to the petitioners within such period.

This writ application stands allowed. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

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