

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15573 of 2006

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Dhruv Prasad, son of Sri Raghunandan Prasad, resident of Mohalla- Purani Gudari,
Raj Guru Chowk, P.O. and P.S. Bettiah, District- West Champaran at present
residing at Mohalla- Dharamsamaj Chowk, P.S. Chhatauni, P.O. Motihari Town,
District- East Champaran

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner-cum- Secretary, Department of Excise and Prohibition, New
Secretariat, Patna
3. The Deputy Secretary, Department of Excise and Prohibition, New Secretariat,
Patna
4. The Excise Commissioner, Darbhanga-cum- Koshi Division, Darbhanga
5. The Excise Superintendent, East Champaran, Motihari

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.P.SRIVASTAVA, Adv.
Mr. Anil Kumar

For the Respondent/s : Mr. AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-02-2015

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Heard Sri Shri Prakash Srivastava, learned counsel for the
petitioner and learned AC to SC-17.

This is the 3rd occasion for the petitioner to invoke writ
jurisdiction of this Court under Article-226 of the Constitution of
India. The petitioner, in the present writ petition, has prayed for
quashing of an order dated 02.08.2005 bearing Memo No. 2614
(Annexure-7), issued under the signature of the Respondent no.2/
Commissioner-cum- Secretary, Department of Excise and Prohibition,
Patna. By the said order, the Excise Commissioner has rejected the

claim of the petitioner for salary during the period when the petitioner was out of service. The order is at Annexure-7.

Learned counsel for the petitioner submits that the petitioner was initially appointed on 13th June 1980 as Excise Constable. However, after 12 years, the service of the petitioner was dispensed with and, thereafter, the petitioner was constrained to approached this Court by filing a writ petition vide C.W.J.C.No.7050 of 1992. The writ petition was allowed and a Bench of this Court set aside the impugned order of termination. In compliance with the order of the writ court vide order dated 11.09.1995 the Excise Commissioner allowed the petitioner to join his services and in paragraph-2 of the order i.e. Annexure-3, it was indicated that in respect of salary, an order will be passed separately. Thereafter, the petitioner filed a second writ petition in the year 1999 vide C.W.J.C.No.7733 of 1999 with a prayer to direct the Respondents for making payment of salary for the period between 07.04.1992 till the date of reinstatement i.e. order dated 11.09.1995 . Before the writ court, an objection was raised by learned counsel for the State that writ petition has been filed much belatedly, however a Bench of this Court considering the fact that in paragraph-2 of the order of reinstatement of the petitioner, it was indicated that in respect of salary, a separate order shall be passed, the writ court disposed of the



writ petition with a direction to take final decision in the matter in view of para-2 of the order dated 11.09.1995 within specified time. In compliance with the order of the writ court, the Excise Commissioner has passed the impugned order i.e. Annexure-7 to the writ petition and rejected the claim for salary of the petitioner for the period between 1992 to 1995.

Learned counsel for the petitioner submits that since the petitioner was illegally removed from his service, which was set aside by this Court, the petitioner was entitled to get entire salary for the period, during which period, he was kept out of service. He submits that the order impugned is contrary to the settled law. He has heavily relied on a Judgment of the Apex Court reported in 2013 (10) SCC 324; Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors. He has placed reliance specifically on paragraph-38.7 of the Judgment of the Apex Court and, as such, he makes a prayer for setting aside the order and directing the Respondents to pay salary for the claimed period.

Learned State Counsel has opposed the prayer of the petitioner. Referring to statement made in the counter affidavit he reiterates that under the provisions of Rule-58 of the Bihar Service Code, salary can be paid only when he has worked. He submits that since the petitioner has not rendered his service during the claimed

period, his claim has rightly been rejected.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. From the first order i.e. order dated 28th March, 1995, it is evident that the petitioner was interviewed for the post of Excise Constable on 13th June, 1980. It appears from the order itself that on the same day he was recommended by the Selection Committee for appointment and on the same day appointment letter was issued. Meaning thereby on 13th June, 1980 he was interviewed, Selection Committee recommended him and on the same day appointment letter of the petitioner was issued. It further appears that on the same day the Dy. Commissioner, Excise, who had appointed the petitioner, had made communication regarding appointment of the petitioner to the Excise Commissioner for its approval. However, subsequently after about 12 years, the petitioner's appointment was cancelled by the Commissioner. This Court noticing those facts and mainly on the ground that after 13 years, neither the Department can initiate any action against the appointing authority nor it was reasonable to terminate the services of the petitioner, this Court quashed the order of termination i.e. order dated 17th April, 1992. It is evident from the order itself that while setting aside the order, no direction was given for making payment of salary for the period, during which the petitioner was kept out of



service. Meaning thereby on this issue there is no adjudication and, as such, it will be presumed that no direction was issued for making payment of salary. Of course, in compliance with the order of this Court while reinstating, it was indicated that in respect of salary matter, an order will be passed separately, but it does not mean that the order was contemplated to consider the claim of the petitioner in respect of arrear salary, no such specific observation has been made in the order i.e. Annexure-3 to the writ petition. Of course, while reinstating the petitioner, it was indicated in the order dated 11.09.1995 that separate order shall be passed in respect of salary. Second writ petition of the petitioner was disposed of with a direction to pass order in view of condition -2 of the order i.e. Annexure-3 and, thereafter impugned order i.e. Annexure-7 has been issued and claim for salary of the petitioner has been rejected.

Keeping in view of the fact that after noticing the manner, in which the petitioner was appointed, the Court is of the opinion that this was the reason that while allowing the writ petition on the ground of taking decision belatedly, this Court had not issued any direction for payment of salary. Even there is no pleading as to whether during the period which the petitioner was out of service was gainfully engaged or not. Moreover, since at the first stage, while the writ petition was allowed directing reinstatement of the petitioner, no

direction was made for the salary during which the petitioner was out of service. At subsequent stage, there is no occasion to direct the respondents to pay arrear of salary. Even paragraph-37 of the said Judgment, i.e. (2013) 10 SCC 324, specifically makes the point clear.

In view of facts and circumstances, I do not find any error in the impugned order. The writ petition stands dismissed.

(Rakesh Kumar, J)

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