

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1435 of 2012

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Subodh Kr. Mishra S/O Late Chotan Mishra R/O Village- Hariharpur
Vaidyalaya, P.O.- Nayanagar, P.S.- Techra, District- Begusarai, A/P Posted
As Keetpalak, Malwari, Extension And Training Centre, Ranipokhar, P.S.-
Sarai, District- Vaishali

.... Petitioner

Versus

1. The State Of Bihar Through The Industrial Commissioner Cum Principal
Secretary Department Of Industries, Vikash Bhawan, Bailey Road, Patna
2. The Director, Handloom And Sericulture (Resham) Vikash Bhawan,
Bailey Road, Patna
3. The Project Officer, Malwari, Extension And Training Centre
Ranipokhar, P.S.- Sarai, District- Vaishali

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Jha, Adv.

For the Respondent/s : Mr. Anshuman Singh, GP24

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 28-01-2015 Since this writ application, which was dismissed earlier for

default, has been restored today by a separate order in M.J.C.No.

1435/2012, this Court also heard the learned counsel for the

parties on merit.

2. The prayer of the petitioner in this writ application reads
as follows:

“That in the instant writ application the challenge is to the
order contained in memo No.13/10, 2556 dated 3.12.2010
whereby and whereunder the representation of petitioner
dated 8.7.2010 was examined and found that the petitioner
was transferred by departmental order No.1080 dated
24.6.2009 to Malbari extension cum training centre Musarhi
from Andi Resham firm Begusarai on optional alternative
basis in his own scale of pay and the petitioner by



Directorate's order No. 1239 dated 30.6.2010 was transferred to his original post of peon at Malbari Training and extension Centre, Ranipokhar since the petitioner is holding the 4th grade post in the cadre of Peon and accordingly the stay of transfer of the petitioner may not be according to law since the petitioner was transferred to his original post of Peon then there is no need of any kind of interference in the said order, has been passed arbitrarily and without taking into consideration the relevant facts and accordingly petitioner prays for quashing of the same and allow the petitioner to continue to the post of Keetpalak to which post he is confirmed and substantially holds the same."

3. Learned counsel for the petitioner submits that in view of the earlier order passed by this Court on 7.9.2010 in C.W.J.C.No. 13676/2010 the respondent Director of the Handloom and Silk has passed the impugned order dated 3.12.2010 upholding his order of transfer on his parent post but then the petitioner has filed a representation to the Departmental Secretary against the aforementioned order of the Director which has not been disposed of as yet.

4. There are two facets to the issue. Firstly, as to whether the appointment of the petitioner on Class IV post as a Nightguard was ever changed so as to allow the petitioner to claim the post of Keetpalak. The answer to that has been given by the Director,



Handloom and Silk, in the impugned order that it was merely a deputation by which the petitioner was asked to work as Keetpalak. Learned counsel for the petitioner also could not lay his hand on any order of the Government or the Director which could show that after the initial appointment of the petitioner on the post of Nightguard he was ever either promoted on the post of Keetpalak or even his substantive appointment was made against the post of Keetpalak. Learned counsel for the petitioner, however, claims that despite the impugned order the petitioner is being still asked to work on the post of Keetpalak.

5. As noted above, this application filed on 19.1.2012 had stood dismissed for default till today and in a period of three years much water has flown down the river Ganges, inasmuch as if the petitioner has been allowed to work as a Keetpalak, a claim which has been only orally made, and that the petitioner is nearing completion of his date of retirement, he may impress upon the Departmental Secretary to consider the desirability of his being continued to work on the post of Keetpalak. Since such representation filed by the petitioner against the order of the Director has not been disposed of as yet, the petitioner may agitate his grievance before the Departmental Secretary.

6. It is, however made clear that this Court has found no

fault or error in the transfer order or the order rejecting the claim of the petitioner to be permanently absorbed on the post of Keetpalak or his being allowed to work as a Keetpalak. The petitioner in fact is out and out a Nightguard and therefore, his all rights including the right to receive his salary from the pensionary benefits would be in accordance with his substantive appointment on the post of Nightguard.

7. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

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