

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2120 of 2015

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Saryug Prasad son of Late Basudeo Sah, Resident of Mohalla Krishnapuri, Ward No. 9, P.S. & District Araria, presently posted as Head Assistant In-charge in the District Transport Officer, Araria.

.... Petitioner/s

Versus

- 1.The State of Bihar through the Principal Secretary of the Department of Home Affairs, Government of Bihar, Patna.
- 2.The Additional Director General cum Chairman cum Managing Director of the Bihar Police Bhawan Nirman Nigam Limited, Patna.
- 3.The Secretary of the Bihar Police Bhawan Nirman Nigam, Patna.
- 4.The Administrative officer of the Bihar Police Bhawan Nirman Nigam Limited Headquarter, Patna-14.
- 5.The Executive Engineer, Bihar Police Bhawan Nirman Nigam Darbhanga Division, Darbhanga.
- 6.The Treasury Officer, Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Mandal, Adv

For the Respondent/s : Mr. GP16- Rajesh Singh

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 03-02-2015 Heard learned counsel for the parties.

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

“directing the Respondent No. 2 to accept the Earn Leave for the period 14.12.2001 to 24.10.2002 and send the Original Service Book to the Treasury Officer, Araria.”

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Junior Accounts Clerk in Bihar Police Bhawan Nirman Nigam Limited (hereinafter referred to as the Corporation) on



04.02.1982, and had worked till 23.03.2006, when he was selected to be appointed in Araria Collectorate where he was ultimately regularized on the post of Clerk by an order dated 09.06.2010, of the District Magistrate, Araria. He has further submitted that the original Service-Book of the petitioner maintained in the Corporation was called for by the Treasury Officer, Araria for making payment of his salary but the same was not sent and the authorities were also not sanctioning the earned leave to the petitioner for his period of absence from duty for the period from 14.12.2001 to 24.10.2002 in which he was seriously ill. According to learned counsel for the petitioner on account of both non-sanctioning, the earned leave as also not sending the Service-Book of the authorities of Corporation to Araria Collectorate, was/is suffering irreparable loss in the matter of receiving payment of his arrears and current salary.

4. Learned counsel for the State on the other hand



has submitted that this writ petition for sanction of earned leave for the period from 14.12.2001 to 24.10.2002, is not only wholly belated but in fact even otherwise is not maintainable because now the petitioner is no longer an employee of the Corporation.

5. This Court will have no difficulty in holding that this writ application so far it relates to seeking a direction for sanctioned of earned leave of 14.12.2001 to 24.10.2002 is wholly belated. From the reading of the writ application it also transpires that the petitioner was unauthorizedly absent from duty during the aforesaid period from 14.12.2001 to 24.10.2002, for which he was also subjected to departmental proceeding. Annexure-5 to the writ application would itself go to show that the petitioner was served with a memo of charge under the signature of Administrative Officer of the Corporation bearing memo HQ. 3045 dated 11.08.2011, and in reply thereof he had filed his explanation taking a plea of his illness for the period from 14.12.2001 to 24.10.2002, as



also his filing application for grant of earned leave before the authorities of the Corporation from time to time. According to the petitioner, no final decision was taken in the departmental proceeding and therefore, this Court should direct the authorities of the Corporation to take a final decision as with regard to grant of earned leave to the petitioner for the period from 14.12.2001 to 24.10.2002.

6. This Court would however find it difficult now to issue such a direction to the Corporation because if a departmental proceeding has been initiated against the petitioner that has to be brought to its logical conclusion. The issue of grant of earned leave for which he has been subjected to departmental proceeding for unauthorized absence can only be decided if the departmental proceeding is brought to an end. At this stage, petitioner cannot seek a direction for sanction of his earned leave which is not a matter of right.

7. In that view of the matter, this writ application

so far it relates to the prayer for grant of earned leave for the period from 14.12.2001 to 24.10.2002, must be and is hereby rejected.

8. Nothing said in this order, however, will not come in the way of the petitioner in approaching the authorities of the Corporation for concluding the departmental proceeding and/or taking any appropriate decision as with regard to the period of absence of his duty from 14.12.2001 to 24.10.2002.

9. As with regard to the rest of relief relating to sending of service book of the petitioner by the authorities of the Corporation to the Treasury Officer of Araria Collectorate, the same must be sent either in original or its authenticated true photocopy within a period of two months from the date of receipt of a copy of this order in the office of Respondent no. 2 as the payment of petitioner's salary and emoluments in Araria Collector pursuant to his being absorbed in the government service has been withheld. The Respondent

no. 2 in case would like to retain the original service book of the petitioner for purposes of record would inform the Treasury Officer, Araria that he may verify the original service book of petitioner and utilise the authenticated photocopy of the service book being sent by the Corporation for the purposes of making payment of arrears and current salary of the petitioner or else the Corporation may retain the true authenticated photocopy of service book of the petitioner while sending the original to Treasury Officer, Araria. This exercise however must be completed by the Respondent no. 2 within a period of two months from the date of receipt of a copy of this order.

10. With the aforementioned observation and direction this writ application is disposed of.

(Mihir Kumar Jha, J)

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