

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14535 of 2007

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1. Daxmina Devi wife of Late Rameshwari Singh
 2. Arun Kumar Singh
 3. Rakesh Kumar Singh
 4. Akhileshwar Kumar Singh, all sons of Late Rameshwari Singh all resident of village Dhenuki P.S. Marhowrah , district Chapra

.... Petitioner/s

Versus

1. The State of Bihar
2. Executive Engineer, Public Health, Mechanical Division, Chapra
3. Assistant Engineer, Public Health, Mechanical Division, Chapra, Saran
4. Junior Engineer Public Health, Mechanical Division, Chapra, Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kapil Deo Singh

Mr. Vijay Kumar

For the State

Mr. Sunil Kumar, A.C. to AAG 6

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 04-05-2015

Heard counsel for the petitioners and the State.

Counter affidavit as well as supplementary counter affidavit have been filed. The original petitioner reached the age of superannuation from service as the Pump Operator in May, 2007. He filed the present writ application in November, 2007 seeking a direction upon the respondents for payment of salary for certain period(s) for which he was found to have absented from the duty. During the pendency of the writ application the original petitioner died on 12.10.2011 and by an interlocutory application being I.A. No. 301 of 2012 filed and allowed, his heirs and legal



representatives have been substituted to prosecute the writ application. By filing yet another interlocutory application being I.A. No. 2285 of 2015 the widow of the original petitioner sought to challenge the order dated 28.05.2007 passed by the Executive Engineer, Public Health Engineering Department (Mechanical Division) Chapra rejecting the claim of the original petitioner for payment of salary for the period(s) he was said to have absented from duty. By the said order the period(s) when the original petitioner was found absent from duty was also held to be break-in-service.

Counsel for the petitioners has disputed the stand taken by the respondents that the original petitioner did not discharge his duty between 07.05.2005 to 10.05.2005, 01.11.2005 to 09.11.2005, 08.12.2005 to 31.12.2005 and 12.01.2006 to 31.07.2006, whereas the State respondent in the counter affidavit as well as the supplementary counter affidavit has specifically asserted about his absent from duty/service. It has been stated that he was transferred from Chapra to Siwan but in spite of his relieving he did not join the transferred post. He was subsequently transferred to Chapra and thereafter posted at Sonapur but the original petitioner did not present himself for duty on certain dates.



After ascertaining the details of his wilful absence from the duty a show cause notice (Annexure-A to the supplementary counter affidavit) was issued whereagainst the original petitioner filed reply/response and on consideration thereof the order has been passed rejecting the representation for payment of his salary for the period(s) when the employee remained absent from duty. This is essentially a question of fact which cannot be appreciated by the writ court. The respondents have explained in detail in this regard in the counter affidavit. In view of aforesaid the relief with regard to payment of salary for those period(s) when the original petitioner remained wilfully absent from duty cannot be granted.

Counsel for the petitioners has next contended that while rejecting the prayer of the original petitioner for adjustment of his absence against the leave, if any, due to him the respondents have directed that the period(s) during which he remained absent shall be treated as break-in-service. The contention of the petitioner is that indisputably the original petitioner was neither dismissed from service nor any such charge or any proceeding was levied. In view of aforesaid, the respondents is wholly unjustified in treating the period of

service when he remained absent from duty as break-in-service which shall have serious effect on the legal dues payable to the employee after retirement.

Counsel for the State, on the other hand, points out that upon superannuation of the petitioner all the leaves admissible to the employee under different heads/category would cease. He relies in this regard on Rule 226 of the Bihar Service Code.

Having heard the parties, in my view, the order contained in memo no. 353 dated 28.05.2007 issued by the respondent Executive Engineer, Public Health Engineering Department (Mechanical Division) Chapra (Annexure-2 to I.A. No. 2285 of 2015) insofar as it directs for treating the period(s) of absence of the employee as break-in-service appears to be not only erroneous but excessive as well. The original petitioner has already retired and left for heavenly abode. It is his heirs who are prosecuting the present writ application.

In view of the facts noted above and after hearing both parties, in my view, the said part of the order dated 28.05.2007 treating the period(s) for which the original petitioner remained absent from duty as break-in-service is

quashed and set aside. The original writ petitioner will be deemed to have continued in service till he attained the age of superannuation.

The writ application is disposed of with the aforesaid direction/observation.

(Kishore Kumar Mandal, J)

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