

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8195 of 2014

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Sri Bageshwari, Son of Late Sukhnandan, resident of Village- Phulwariya,
P.S. Shiv Sagar, District- Rohtas.

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Managing Director, Vidyut Bhawan Bailey Road, Patna
2. Principal Secretary, Energy Department, Govt. of Bihar, Patna
3. Director, South Bihar Power Distribution Company Ltd., Vidyut Bhawan Bailey Road, Patna
4. The General Manager/Chief Engineer, South Bihar Power Distribution Company Ltd., Gaya Electricity Supply Area, Gaya
5. The Superintending Engineer, South Bihar Power Distribution Company Ltd., Electric Supply Circle, Sasaram, Rohtas
6. Electrical Executive Engineer, South Bihar Power Distribution Company Ltd., Electric Supply Division, Sasaram.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Prawesh Kumar, Adv Mr. Rajendra Prasad, Adv

For the Electricity Board : Mr. Ajay Kumar Gautam, Adv

For the State : Mr. Krishna Kumar AC to GP-26

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 20-02-2015 Heard learned counsel for the parties as with

regard to the following relief, prayed in this writ

application:-

“That this is an application for issuance of a writ in the nature of mandamus for giving a direction to make, payment of arrear salary of the petitioner for the period of 01.10.2005 to 14.09.2007 making compliance of order passed by the respondent authorities contained in letter no. 2380 date 12.9.07(Annexure-3) of the writ petition.”

Learned counsel for the petitioner has submitted



that the petitioner would be entitled for payment of the salary and emoluments for the aforementioned period from 01.10.2005 to 14.09.2007, primarily on the ground that his earlier order of retirement dated 04.07.2005 was quashed by this Court by order dated 31.01.2007 passed in C.W.J.C No. 10750 of 2005, and the issue was remitted for determination of the age of the petitioner for the purposes of fixing his date of retirement to the Medical Board and the Medical Board ultimately found the petitioner aged about 58 years as on 08.08.2007, on account of which his date of retirement was fixed as 31.08.2009. According to learned counsel for the petitioner, therefore, when the order of retirement of the petitioner was quashed by this Court, the petitioner would be also entitled for the consequential benefit both in terms of continuation in service till 31.08.2009, as also for the payment of salary for the period he was wrongly deprived by the respondents to work on the post.



Learned counsel for the respondents on the other hand having filed the counter affidavit have taken a plea that since the petitioner has remained out of service from 01.10.2005 to 14.09.2007, he would not be entitled for payment of his salary.

The crucial question therefore, in this case would be that who was responsible for the petitioner for keeping him out of service? Whether the petitioner on his own volition went out of the service or whether he was forced by the respondents to leave such service? The answer to both the aforesaid questions will be in favour of the petitioner because the petitioner was given discriminatory treatment in the matter of his being retired from service without subjecting him to his examination by the Medical Board. In fact this aspect of the matter stands concluded in an inter parte order dated 31.01.2007, wherein, the order of the Bihar State Electricity Board, the predecessor body of the present company was quashed with the following observations

and directions:-

“Heard learned counsel for the parties.

The petitioner has filed this writ application seeking a direction to the respondents, Electricity Board, that he should be subjected to the Medical Board for determination of his age as has been done with regard to other employees. The Board instead of taking a decision of its own ought to have referred the case of the petitioner before a Medical Board which has not been done in his regard. It is submitted that the decision contained in Annexure-4 dated 4.7.2005 to that extent suffers from inconsistency and deserves to be quashed.

Learned counsel for the Electricity Board has filed counter affidavit and when questioned by the Court submits that there is no objection to determine the age of the petitioner by a Medical Board.

In that view of the matter, the decision as contained in annexure-4 dated 4.7.2005 is quashed and respondent is directed to subject the petitioner before a proper Medical Board for determination of his age. As has been the consistent view of this Court in this regard the lower age determined by the Medical Board shall be taken into consideration in fixing his date of birth. The above exercise in this regard may be carried out within a period of three months.

This writ application is accordingly disposed of with the above direction.”

Thus, in view of the aforementioned direction if the respondents ultimately had been subjected to medical examination the petitioner for determination of his age by the Medical Board and the Medical Board had found the petitioner eligible to continue in service on the basis of which the petitioner has continued till 31.08.2009, there would be no difficulty in holding that

the petitioner would also be entitled for payment of salary for the interregnum period in which he was forcibly kept out of service of the action/orders of the then Board.

In that view of the matter, this writ application is allowed and respondents are hereby directed to make payment of salary and emoluments to the petitioner for the period from 01.10.2005 to 14.09.2007, within a period of three months from the date of receipt of this order.

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

(Mihir Kumar Jha, J)

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