

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4668 of 2010

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Maresh Prasad S/O Late Shiv Shankar Prasad R/O Mohalla- New Colony, Chhoti
Khanjarpur, P.S.- Barari, Distt.- Bhagalpur

.... Petitioner/s

Versus

1. The State Bank Of India, Through Its Chairman, State Bank Bhawan Co-
Operative Sector, Mumbai
2. Chairman, State Bank Bhawan Co-Operative Sector Mumbai
3. The Chief General Manager, State Bank Of India Local Head Office West
Gandhi Maidan, Patna
4. The Assistant General Manager, State Bank Of India, Local Head Office West
Gandhi Maidan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Adv.
Mr. Ranjan Kumar Jha
Mr. Gaurav Kumar

For the SBI : Mr. K.K.Sinha
Mr. Anjani Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 12-05-2015

Heard learned counsel for the parties.

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

"1. ----- for issuance of a writ in the nature of certiorari for
quashing the letter no. HR/NBK/4440 dated 07.01.2010
issued under signature of Assistant General Manager (HR)
State Bank of India by which rejected salary of the working
period from 1.4.2001 to 27.8.2001 and further issued
direction to respondent to pay the salary of the working
period of the petitioner, from which period respondents have
taken works and fair of carriage charge of Rs. 5,000/- and
medical bills with 18% interest per annum to till date of
payment and further give other legal and consequential
benefit attached to the post."



3. Mr. Shardanand Mishra, learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that though the petitioner had retired from service of the State Bank of India on 31.3.2001 but, then, he was forced to work in the Bank till 27.8.2001 as no one had taken over the keys of the Bank from him. According to Mr. Mishra, the petitioner therefore having been forced to discharge his duty till 27.8.2001 will be entitled for full salary and emoluments for the period 1.4.2001 to 27.8.2001. Having this view, Mr. Mishra has gone to assail the impugned order passed by the competent authority on 7.1.2010 rejecting such prayer of the petitioner which, according to him, is based on non-est and non-existent materials.

4. Learned counsel for the Bank, on the other hand, has supported the impugned order and the action of the Bank in denying payment of salary to the petitioner for the period 1.4.2001 to 27.8.2001. In this regard he has invited attention of this Court to Paragraphs no. 20, 23, 24, 25, 29, 30 and 31 of the counter affidavit which for the sake of clarity and convenience is quoted hereinbelow:

“20. That the prayer of the petitioner made in Paragraph No.1 of the writ petition is not maintainable, on the following grounds:-

(A) The petitioner's claim is purely money claim which is stale and afterthought and is not fit to be entertained in writ jurisdiction.

(B) The claim has been lodged for the first time in the month of December, 2005 i.e. much after three years of the accrual of the cause of action, which is completely a time barred claim.

(C) The petitioner's writ petition No. 10818 of 2009 claiming the amount from the Bank after eight years of the accrual of the cause of action has been held to be not entertainable and maintainable hence this writ petition is completely time barred.

(D) The Hon'ble Judge in the earlier writ petition has not granted liberty to the petitioner to file any Appeal/representation before the Bank, hence his writ petition was dismissed as withdrawn and the petitioner, of his own, had made an appeal before the bank for which there is no rule in the Bank.

(E) If the petitioner worked even after retirement, he acted in excess of his duty for which he was not required to do so by the Bank under any contract and agreement.

(F) The petitioner has not produced any document to show that the respondent Bank ever asked or compelled him to do work in the Bank after his retirement.

(G) There is no rule in the Bank to grant salary to an employee after his retirement when the Bank has not extended his service.

23. That the statement made in paragraph no.6 of the writ petition is incorrect that the Bank was not ready to take over charge from the petitioner after his retirement rather the fact is that the petitioner himself did not hand over the charge which he could have done by handing over charge to the State Bank of India Pakur Branch or any nearby Branch or to the Lead Bank Department at Local Head Office itself.

24. That in respect of the statement made in paragraph no. 7 of the writ petition it is stated that taking over charge from the petitioner on 27th August 2001 was formal. In fact, the petitioner is deemed to have handed over charge on the close of the business of the Bank on 31st March 2001 when he retired from his service.



25. That in respect of the statements made in paragraph no. 8 and 9 of the writ petition it is stated that if the petitioner worked in the Bank even after his retirement, he did so of his own and the respondent Bank did never compel him to do work in the Bank after his retirement. Since the Bank did not compel him to do work in the Bank, the Bank is not under any obligation to pay any salary to the petitioner even for a day after his retirement from the Bank. As with regard to transportation cost, he has been asked to submit the bill which shall be paid to him as per the extant rules and norms of the Bank, which he has not submitted till date.

29. That in respect of the statement made in paragraph no.14 of the writ petition, it is stated that the petitioner has never required nor compelled the petitioner to do any work in the Bank even after his retirement. After his retirement, it was the duty of the petitioner to hand over charge of the key to the SBI, Main Branch, Pakur or nearby Branch or to the Lead Bank Department at Local Head Office, Patna. Merely keeping the key does not make the Bank liable to make payment to the petitioner for the period during which period, he had been keeping the key of the Bank intentionally and deliberately in order to claim the payment from the Bank.

30. That as with regard to the statement made in paragraphs no. 15, 16 and 17 of the writ petition, it is stated that in order to create evidence in his favour, the petitioner appears to have signed in the progress report sent to the AGM, LHO, Patna and also the Audit Report and the quarterly report. The petitioner did all those works of his own. The respondent bank neither required nor compelled him to do any work in the Bank. The petitioner, designedly, made to appear himself before some Bank's officials that he had not retired so far. If such officials

would have known that the petitioner has retired from the Bank's service and his services have not been extended, they would not have sought any such assistance from the petitioner if so taken in the Bank's matter.

31. That at the relevant period, there was neither any dearth of the Bank's officials in the Bank nor services of the petitioner was indispensable in the Banking matter and so there was no necessity for the Bank to take the services of the petitioner."

5. From a bare reading of the aforementioned stand of the respondents in their counter affidavit which also remained uncontroverted by the petitioner till date, two things are very clear, firstly, that no one in the Bank had asked the petitioner to continue in service after his retirement and that the petitioner on his own had retained the keys and secondly, his earlier writ petition for the same relief on account of delay of more than eight years of such cause of action was not entertained.

6. In the considered opinion of this Court, this writ application also must fail because such claim for payment of salary of the petitioner is against his own conduct, inasmuch as, for the relevant period when after his retirement came into force w.e.f. 1.4.2001, he was paid monthly pension in every month and he had happily kept on receiving this amount. The petitioner in fact had never made a protest that he had never retired and he should not be paid pension. The petitioner, therefore, having received monthly pension for every month from April, 2001 cannot be heard to say that his services were extended or he was re-

employed by the Bank.

7. The retirement of the petitioner from the service of the Bank on 31.3.2001 is an admitted fact. The only issue is as to whether the petitioner's charge was taken-over from him or had remained with him on account of no one had taken-over the keys from him which was in his possession in capacity of Deputy Manager of the State Bank of India in the concerned branch. The answer to that however cannot be that if the key lying with the petitioner was not taken-over from him, he will be deemed to have continued in service till such charge of the key was taken-over from him. That would be allowing someone to get automatic extension of service for which actually a specific order has to be passed by the employer by the way of extension of service and/or reemployment.

8. That apart, such claim for the payment of salary of the petitioner for a period of almost five months i.e. April, 2001 to August, 2001 for the first time was raised by him before this Court after more than eight years by filing a writ application in the year 2009. As a matter of fact the order of this Court dated 31.8.2009 in C.W.J.C.No. 10818/2009 will itself bear it out that this Court had refused to entertain the writ application filed by the petitioner after eight years of the cause of action. The order of this Court in this regard being relevant is also quoted hereinbelow:

“ The petitioner, who was an employee of the State Bank of



India, has raised two claims in this writ petition. His first claim is that 6 months prior to his superannuation, he was transferred but he was not paid charges for transfer of residence amounting to Rs.5,000/-. His second grievance is that even after superannuation, he continued to work for a period of about 4 months when he was ultimately relieved. He wants remuneration for that period. Unfortunately, this writ petition cannot be entertained as both these claims relate to the year 2001 and for the first time, the petitioner has come to this Court in 2009. Moreover, in between, his representations were disposed of as late as in 2009. He did not come to this Court.

In such a situation, I am not inclined to entertain this writ petition.

In view of the aforesaid facts, learned counsel seeks permission to withdraw this writ petition and prefer any appeal or other remedy, as may be available to him.

This application is dismissed as withdrawn.”

9. As would be evident from reading of the aforementioned order this Court had refused to entertain the writ application on the ground of delay and therefore, withdrawal of such writ petition without leave to the petitioner to file a fresh writ petition for the same cause of action will not be maintainable. The so called disposal of the appeal on 7th January, 2010 also in no way would improve the matter because the Bank had only enclosed itself earlier order passed before dismissal of the writ petition, wherein it had reiterated to its stand in answer to the legal notice given by the counsel for the petitioner. From the aforementioned order it becomes very clear that the petitioner’s representation was

rejected as has been recorded in the order of this Court and thereafter the petitioner had given a legal notice through his counsel which again was replied by the Bank in terms of the earlier order stating as follows:

“ You were aware of your date of retirement, as admitted by you and despite that you continued to attend office. You could have surrendered the keys to the Branch head Pakur Branch or even to the Lead Bank Department of LHO. However, you did not act accordingly and due to your vested interest your continued there which is illegal. We do not find merit in your claim for salary and allowances from 1.4.2001 to 27.8.2001.

Further, truck fare from the Branch to your permanent residence and also the medical bills will be paid as per extant instructions of the Bank. You are, therefore, advised to submit your bills to the Assistant General Manager (Admin.), Bhagalpur, for payment.”

10. It, thus, becomes clear that the petitioner is trying to agitate the same issue time and again for which his earlier writ petition was not entertained on the ground of delay.

11. That apart the petitioner can have no answer as to why he had kept the keys with him when he could have surrendered the keys to the Branch Head of Pakur Branch and even to the Lead Bank Department at Local Head Office. Thus, whatever has been stated by the Bank in reply to the claim of the petitioner including that the petitioner himself did not act with due diligence and wanted to continue in the service of the Bank even after his retirement but some vested interest cannot be held to be bad much less interfered by this Court when his first

writ petition, as indicated above, had already failed.

12. In any event this Court does not find any error in the impugned order assailed in this writ application nor can the petitioner be allowed to raise the same issue with regard to payment of his salary for the period 1.4.2001 to 27.8.2001.

13. That being so, this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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