

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1121 of 2012

IN

Civil Writ Jurisdiction Case No 7223 of 2009

- =====
1. The State Of Bihar
 2. The Director, Primary Education, Bihar, Patna
 3. The District Magistrate, East Champaran, Motihari
 4. The District Superintendent of Education, East Champaran, Motihari
 5. The District Education Establishment Committee, East Champaran, Motihari
Through Its Chairman The District Magistrate, East Champaran, Motihari

.... Appellant/s

Versus

Prabhakar Kumar Sharma Son Of Late Ramadhar Sharma Resident Of Village-
Jihuli, Police Station- Patahi, District- East Champaran

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr Ujjwal Kumar Sinha, AC to AAG XI

For the Respondent/s : M/s Ansul, Archit Rajpal, Anuj Kr, Advocates

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 05-11-2015

IA No 7358 of 2015 has been filed by the sole respondent for vacation of stay which was granted while admitting the intra-Court appeal.

2 Having heard the learned counsel for the State and the learned counsel for the respondent, we are of the view that it is better to dispose of this appeal on merit rather than hearing on matter of stay. We had, accordingly, adjourned this matter to enable the

learned counsels to argue the matter on merits for its final disposal at this stage itself. Having heard the learned counsels, matter is being finally disposed of at this stage itself.

3 The writ petitioner, who is the respondent herein, had claimed salary which was, according to him, due and payable to him virtually from 1981 to 1997 and that too on B Sc trained scale. The facts which led to such a claim are also not in dispute. The writ petitioner/appellant was permanently appointed as Assistant Teacher in the year, 1973. In 1981, he gave an application of his illness and allegedly vanished. It is not in dispute that thereafter in 1982, he tried to rejoin the school. On his application itself, the Headmaster informed him that, due to his long unauthorized absence, his services had been terminated. Thereafter, the writ petitioner/appellant kept making representations that there were no proceedings, no notice and the termination was bad. He should be allowed to join. The last of such representations is of the year, 1984. Thereafter, in 1990, upon his representations filed, the matter was considered afresh and the authorities including the Regional Deputy Director of Education (For brevity, *the RDD*) was of the view that the termination was void and unenforceable inasmuch as neither any proceeding was initiated nor any notice was ever issued to the writ petitioner/appellant in this regard. Ultimately, the District Collector was of the view that the

order of termination of service be withdrawn but the writ petitioner should be made to join service afresh. The matter was well considered by the RDD who correctly took the view that the order of termination had to be recalled and the writ petitioner/appellant be directed to join his service as an employee not terminated. It could not be a fresh joining. Accordingly, it is in 1997 that writ petitioner/appellant was ultimately allowed to join though inspite of the orders, it took over 14 months thereafter to issue an order posting him. The writ petitioner then having joined, superannuated in the year, 2009. He was aggrieved by non-payment of salary for the period 1981 to 1997.

4 His second grievance was that when he had joined service, he, undisputedly being a Graduate, was, thus, entitled to Graduate trained scale as was given to his juniors in the cadre from the date when they were given Graduate trained scale enhancing him from Intermediate trained scale.

5 The learned Single Judge, considering the facts and considering the case of the Apex Court in the case of *Union of India & Others –Versus- K V Jankiraman & Others* since reported in AIR 1991 Supreme Court 2010, held that the principle of no work no pay would not apply because the writ petitioner had given his joining way back in 1982 itself when he was told that his services had been

terminated. This termination order, after a lot of correspondences and deliberations, were ultimately recalled and cancelled in the year, 1997. The Writ Court further held that there being no dispute with regard to the writ petitioner/appellant being a Graduate, he would, thus, be entitled to Graduate trained scale from the date when his juniors were given the said scale.

6 State, being aggrieved by this judgment, has filed this intra-Court appeal. Learned counsel for the State submits that as per the writ petitioner/appellant's own showing, having given an application for medical leave in the year 1981, he vanished. Thereafter, he made representations for being permitted to rejoin upto 1984. Again thereafter, he went in deep slumber only to pursue the matter once again from 1990 wherein ultimately, in 1997, the order of termination was recalled and he was allowed to rejoin. Therefore, the learned counsel for the State submits that the learned Single Judge was wrong in allowing this period as a full service period for the purposes of payment of remuneration. He then submits that so far as B Sc trained scale is concerned, the petitioner ought to have made a claim for that, no sooner his juniors have been granted the said scale and having not made the claim at that time, he ought not to have been given the said benefit.

7 The first thing we would like to clear is no employee

of Government has to make claim for his remuneration. It is the legal and constitutional duty of the State as a model employer to make payments which are necessary and due. The State cannot sit back and abdicate its constitutional and statutory obligations of making payment and then throw the onus upon the employee as if to make the right to receive remuneration dependent upon demand to be made by the employee. That would be putting the cart before the horse. This misconception, being removed, if we see the facts, they are a bit different. It is not in dispute that in 1981, writ petitioner/appellant gave an application of illness as he was suffering from tuberculosis and stopped coming. Even if we assume that this application was not given, he, being absent, the least that was required to be done by the State, was to give a notice to him for unauthorized absence. From various documents and pleading, it is abundantly clear that absolutely no such step was taken. When writ petitioner/appellant tried to rejoin in 1982, he was told that he had been dismissed and no joining could be accepted. It is accepted by the State, in its counter affidavit and the documents appended as also the writ petition, that neither the writ petitioner/appellant was noticed nor any proceeding was initiated nor even dismissal order was communicated to the writ petitioner/appellant. Who took this decision to terminate without following the procedure is not very clear? Therefore, we have the fact

that the writ petitioner/appellant's application for medical leave was never rejected. His joining in 1982 was wrongly refused and he had pursued the matter upto 1984.

8 We are, therefore, of the view that so far as remuneration for the period, 1981 to 1984 is concerned, subject to the period of medical leave, it cannot be denied. So far as period from 1984 to 1990 is concerned, again there was a total silence on the part of the writ petitioner/appellant. After 1984, he did not try to rejoin till the matter was resurrected in 1990. It would not, thus, be fair to burden the State with payment of remuneration during this period of 12.06.1984 to 12.04.1990. Thereafter, the writ petitioner/appellant cannot be faulted for the leisurely manner in which his case was dealt with by the authorities. It, being not in dispute that in 1990, ultimately a decision was taken that his termination being void simpliciter, he had to be permitted to rejoin. That being so, again from 12.04.1990, it cannot be said that the writ petitioner/appellant was unwilling to join and discharge his duties. It is the lethargic attitude of the State Government that kept him out. Therefore, for this period, that is 1990 to his actual joining in 1997, would also be a period where State would be bound to pay the remunerations.

9 Thus, in our view, it would be appropriate for us to modify the order of the learned Single Judge to the extent that for the

period 1984 to 1990, as aforesaid, the writ petitioner/appellant would not, on equitable consideration, get any remuneration but he would get continuity of service.

10 Then we come to the second aspect of the matter that is, B Sc trained scale. From the pleadings, it does not appear that State ever challenged the correctness of the claim of the writ petitioner/appellant. All that the State wanted to impress was that petitioner, being absent and not having made a claim for B Sc trained scale, he will not be entitled to the said payment. We are unable to uphold this contention. Once again, we would like to emphasize that it is not for the employee to make a claim. At the time of selection and joining itself, State and the authorities were fully cognizant of the fact that the writ petitioner/appellant was a Graduate. It is not something that was exclusively within the knowledge of the writ petitioner/appellant. It is on the basis of that Graduation degree that he had been selected. When others including his juniors were granted the same scale that is B Sc trained scale, automatically the writ petitioner/appellant became entitled for the same. He, being entitled to the same, there was no issue or no cause for him to make a demand. It was a statutory obligation on part of the State to have paid the same, for apart from other, State, being a model employer, has to do what is just and proper and not force an employee to litigate on every issue.

11 Thus, on this aspect, we hold that the learned Single Judge was correct in holding that the writ petitioner/appellant was entitled to B Sc trained scale from the time when his juniors were granted the same.

12 As the writ petitioner/appellant had superannuated almost about six years back, we direct the State to ensure calculation and payment of arrears, as indicated above within a period of three months from today, the responsibility of which would be on the District Programme Officer (Establishment), East Champaran at Motihari.

13 With the modification of the learned Single Judge's order, to the extent as above, this appeal stands disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

U			
---	--	--	--