

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12349 of 2013

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1. Upendra Choudhary Son Of Late Ganesh Choudhary Resident Of Itahari, Post Office - Phutkichak, P.S. Gogari, District - Khagaria

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Principal Secretary, Rural Works Department, Government Of Bihar, Patna
4. The Engineer - In - Chief (Middle), Water Resources Department, Government Of Bihar, Patna
5. The Executive Engineer, Rural Development Special Division, (Divisional Commissioner), Munger, District - Munger
6. The Superintending Engineer, Rural Development Special Circle, Munger, District - Munger
7. The Divisional Commissioner, Munger Division, Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi,
Mr. Hamrata Singh, Advocate.
For the Respondent/s : Mr. S.K. Singh, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-12-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has raised a grievance that he has not been paid salary for the period from 7.1.2008 to 17.10.2011. The petitioner has filed an interlocutory application vide I.A No. 3548 of 2015 and in paragraph 3 it has been mentioned that petitioner has been paid salary from 7.1.2008 to 7.2.2008. Now relief left for consideration for salary for the period from 8.2.2008 to



17.10.2011. The facts go in the following manner. Petitioner was appointed as Junior Engineer on 7.2.1979 by the Irrigation Department. He was sent on deputation to the office of the Rural Development Department Special Division (Divisional Commissioner), District Munger. Vide order date 31.12.2003 the Water Resources Department recalled the service of 199 Junior Engineers but same was not acted upon. Later on another order was passed on 26.11.2007 thereby recalled services of 79 Junior Engineers including the petitioner. The claim of the petitioner is that he was not relieved by the office of the Executive Engineer, Rural Development Department Special Division (Divisional Commissioner), District Munger even then he gave his joining to the head office on 7.1.2008 but he was allowed to join on the ground that he was not relieved from the office of the Rural Development Department Special Division (Divisional Commissioner), District Munger but he was transferred to the Office of the Chief Engineer, Water Resources, Purnea on 7.2.2008, after lapse of long period of time on 21.8.2008 the petitioner gave his joining in the office of Chief Engineer, Water Resources, Division, Purnea. Now claim of the petitioner is that his joining was not accepted but he was transferred to the office of the Executive Engineer, Purnea. Admitted fact is that the



petitioner did not join the office of the Executive Engineer, Purnea. As per claim of the petitioner, he has filed representation before Executive Engineer, Rural Works, Special Division, Munger, Superintending Engineer, Rural Works Special Division, Munger and Divisional Commissioner, Munger for his relieving order but no order was passed on his representation, later on when a letter was written by the Chief Engineer, Rural Works Department vide Memo No.5263 dated 20.6.2011 to the Executive Engineer, Rural Works Department, Munger brought to his notice that service of the petitioner was repatriated to the parent department and office of the Executive Engineer has not relieved the petitioner and asked explanation whereupon the Executive Engineer vide letter dated 29.6.2011 relieved the petitioner with retrospective effect from 6.1.2008 and the petitioner has been deprived of the salary for the period as aforesaid of salary .

Learned counsel for the petitioner submits that petitioner was not at fault when he was not relieved the question of his joining to the head quarter as well as office of the Chief Engineer including the office of the Executive Engineer does not arise and he cannot be deprived.

Learned counsel for the State has submitted that petitioner



after repatriation order has given joining on 7.1.2008 he remained there waiting for posting up to 7.2.2008. Thereafter he was asked to join to the office of the Chief Engineer and after lapse of long period on 21.8.2009 the petitioner has given his joining in the office of the Chief Engineer. In turn when he was transferred to the office of Executive Engineer he never joined so it is the petitioner who is at fault and not Government. He has further submitted that the order of the Executive Engineer is nothing but an order has been passed when received letter from the Chief Engineer to regularize the services of the petitioner. As petitioner has not discharged the duty there is no question of salary.

Having considered the rival contentions of the parties, petitioner has to succeed on his own strength not on the weakness of the other side. Admittedly when repatriation order was passed he has joined to Head Office and he was paid salary for the period remained waiting for posting which he has accepted in the interlocutory application inasmuch as the petitioner after lapse of more than six months has joined in the office of the Chief Engineer. There is no explanation from petitioner, what prevented him to give his joining after lapse of such a long period in the office of the Chief Engineer. He has only taken a



plea he was not relieved so his joining was not accepted by the Executive Engineer but he has not produced any material in actuality and factuality that he had given his joining in the office of the Executive Engineer when he himself not joined the office the question of his acceptance and rejection does not arise. The question would arise when he had filed an application for his joining. If his application was rejected the question of genuineness of assertion would have been under consideration. In such view of the matter, the petitioner remained absent during the period in question, did not discharge the duty.

In such view of the matter, petitioner is not entitled for the salary of the aforesaid period. Accordingly this writ petition is dismissed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2016
Transmission Date	NA

