

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.853 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 15060 of 2006**

=====

Ram Dayal Singh, son of Late Ramjad Singh, resident of village-Gobindpur, P.O.-
Daliyana (Bikram), District- Patna.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Industry, Government of Bihar, Patna.
2. The Director of Industry, Department of Industry, Government of Bihar, Patna.
3. The Joint Director, Industry, Regional Industry Directorate, Patna Division, Patna.
4. The General Manager, District Industry Centre, Arrah.

.... Respondents-Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, G.A.-1
Ms. Aditi Hansaria, A.C. to G.A.-1

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 23-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 5th of January, 2015 whereby, the claim of the appellant for treating the period from 1st of July, 1975 to 23rd of November, 1978 as qualifying period for the purpose of pension and also to grant benefit of first and second time bound promotions remained unsuccessful.

2. As per the appellant, he was initially appointed on 8th of October, 1964 on the post of Clerk-cum-Storekeeper in Rural



Workshop, Lakhisarai under the control of District Industry Officer, Munger. He continued to work till December, 1971 when he was transferred to Rural Workshop Ram Nagar, West Champaran under the Community Project Officer (Industry) Sitamarhi. In the year 1975, the State Government decided to dissolve the Rural Workshop and the employees of the Rural Work Shop were adjusted in the Community Project Centre, Darbhanga. However, the appellant was made to join only on 24th of November, 1978.

3. The claim of the appellant for the of salary and regularization for the said period was sent by the General Manager, District Industry Centre, Bhojpur to the Director, Industry, Bihar, Patna on 13.02.2003. Since no action was taken on the representation made by the petitioner, he moved the writ jurisdiction of this Court which remained unsuccessful vide the order impugned by the learned Single Bench.

4. The learned Single Bench has dismissed the writ petition on the ground of delay and laches in claiming the benefits of pension, after treating service from 1st July, 1975 to 23rd of November, 1978 as continuous service, after superannuating from service on 28th of February, 1997. The learned Single Bench held that the writ petition has been filed on 6th of December, 2006, i.e. after nine years from the date of retirement and thus suffers from delay and laches.



5. Learned counsel for the appellant vehemently argued that the appellant is not claiming wages for the period from 1st of July, 1975 to 23rd of November, 1978, but claiming that such period be taken into consider for granting pensionary benefits, i.e. from the date of initial appointment in the year 1964. Since no decision was taken by the respondents on the representation of the appellant, therefore, the claim of the appellant cannot be said to be delayed.

6. In the counter affidavit filed to the writ application, it is asserted that the appellant was not present in the Department from July, 1975 till 23rd November, 1978 and was on unauthorizedly absent from duty. He could not be adjusted due to his long absence and that he was adjusted soon after he made a representation on 1st of November, 1977. Therefore, the period from 1st July, 1975 to 23rd of November, 1978 cannot be taken into consideration for any purpose.

7. We have heard learned counsel for the appellant and find no merit in the present Letters Patent Appeal. The appellant has not worked for the period from 1st of July, 1975 to 23rd of November, 1978. The grievance in respect of the said benefit was not made when he was working in the Department, but after his superannuation on 28th of February, 1997. Had a proper representation been made at the relevant time, the Department could have taken a conscious decision in respect of the absence period including even the decision to proceed



against the appellant for misconduct of remaining absent for the period, but the appellant remained silent for number of years even after his superannuation on 28th of February, 1997. Since he has not worked for any of the Government Organization from 1st of July, 1975 to 23rd of November, 1978, he cannot be paid retiral benefits after treating the said period as the duty period.

8. The argument of learned counsel for the appellant is that he had been paid pensionary benefits by taking into consideration his service from the year 1964, therefore, the period of absence i.e. 1st of July, 1975 to 23rd of November, 1978 cannot be ignored for the purpose of payment of retiral benefits.

9. We do not find any merit in the said argument as well. Firstly, there is no assertion by the appellant that he had been paid retiral benefits from the date of his initial appointment. Secondly, even if he has been paid pensionary benefits from the date of his initial appointment, but having absented unauthorisedly for more than three years, such period cannot be taken into consideration for pensionary benefits as it is not a period on active service. Such period has to be treated as *dies non*.

10. In respect of claim of the appellant for time bound promotion, again we find that the claim suffers from delay and laches. According to the appellant, the right of first time bound promotion

arises in the year 1995. The appellant invoked the jurisdiction of this Court in the year 2006. Thus, the claim for time bound promotion could not be made after 11 years from the day when any cause of action can be said to have arisen.

11. Consequently, we do not find error in the order of the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The Letters Patent Appeal, is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
Uploading Date	30.08.2016
Transmission Date	