

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6777 of 2015

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1. Union of India through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
 2. The Development Commissioner (Handicrafts), West Block no. 7, R.K. Puram, New Delhi.
 3. The Regional Director (Handicraft), East Regional Office, C.G.O. Complex, Salt Lake, Kolkata.
 4. The Assistant Director, Handicraft, Carpet Weaving Training Cum Service Centre/Marketing & Service Extension Centre, Ministry of Textiles, E.S.I Colony, Ambedkar Path, Patna-14.
 5. The Regional Director (CR), O/o Development Commissioner (Handicrafts), Kendriya Bhawan, 7th Floor "H", Aliganj, Lucknow.
 6. The Assistant Director, Handicrafts, Government of India, Ministry of Textiles, O/o Development Commissioner, Kasturba Nagar, Sagra, Varanasi.

.... Petitioner/s

Versus

Lalji Yadav, S/o Ram Narayan Yadav, Village- Lakhanpur (Abhyhanpur), V.P.O.- Kukrauthi, District- Sant Ravidas Nagar (U.P.), presently working as Assistant Instructor, IICT, Chouri Road, Bhadohi (Sant Ravidas Nagar), U.P.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. D. Sanjay, A.S.G. Mr. Ravinder Kumar Sharma, C.G.C.
For the Respondent/s	:	Mr. Hemant Kumar Karan & Mr. Jayant Kumar Karan, Advocates.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 17-05-2016

Heard learned counsel for the parties.

The petitioners are aggrieved by order dated 22nd November, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') by which O.A. No. 869 of 2010 filed by the respondent has been disposed off directing the petitioners to decide the seniority of the

respondent and extend all consequential benefits to him within a period of four months treating him to be in continuous service from 08.10.1985.

The brief history of the case is that the respondent has gone on leave initially for two days on 4th and 5th August, 1986 and claims to have reported for duty on 02.03.1987 but the petitioners did not permit him to do so leading to filing of O.A. No. 21 of 1991 which was disposed off by the Tribunal on 23.11.1991 with a direction to the Deputy Director to dispose off the letter written by the Assistant Director seeking approval relating to resumption of duty by the respondent. The petitioners having passed such order on 05.08.1987 terminating his services led to filing of O.A. No. 143 of 1992 assailing the order dated 05.08.1987. The Tribunal by order dated 30.12.1994 partly allowed the O.A. with a direction to the petitioners to permit the respondent to resume his duties as Assistant Craftsman, without prejudice, taking into consideration any disciplinary action, if any, pending against him. It was further stipulated that in case the applicant is found not guilty and allowed to join his duties, the period is to be taken continuously and also that it would be open to the petitioners to decide as to whether the respondent is entitled to the wages during the period of absence. The petitioners thereafter allowed him to join by order dated 02/08.03.1995. However, the respondent was not satisfied with Clause-9 of the said order which reads as under:-

‘9. As per the judgment of the Honourable CAT it

has been decided that Sri Lalji Yadav is not entitled to any pay w.e.f. 04.08.86 to till his joining to the post, and the period of absence from duty will be treated as no work no pay and the period will not count for increment and other benefits.'

Thus, he again moved before the Tribunal in O.A. No. 45 of 2003 which was disposed off observing that Clause-9 was included in accordance with the liberty granted by the Tribunal (earlier in O.A. No. 143 of 1992) but quashing the order of the petitioners dated 27.04.1995 to the effect that the respondent was directed to be paid from 29.03.1995 and he was held not entitled to any pay with effect from 04.08.1986 to 28.03.1995 and rather for payment of arrears to one year before filing of the Original Application. However, liberty was given to the petitioners to pass a fresh order in respect of this period. When no order was passed, the respondent filed CCPA No. 47 of 2010 which was dismissed on 20.04.2010 with liberty to file fresh O.A. The respondent then filed O.A. No. 869 of 2010 being aggrieved by the fact that the petitioners had not passed any order till then. However, subsequently during the pendency of the Original Application, the petitioners passed order dated 21st August, 2012 which was also impugned in O.A. No. 869 of 2010. The Tribunal finally disposed off O.A. No. 869 of 2010 by order impugned in the present writ application dated 22nd November, 2013 directing the petitioners to decide the seniority of the respondent as well as to extend all consequential benefits treating his services to be continuous from 08.10.1985.



Mr. S.D. Sanjay, learned Additional Solicitor General submitted that the order passed by the petitioners dated 21st August, 2012 is a detailed and well discussed order and in terms of the order dated 29.05.2009 passed by the Tribunal in O.A. No. 45 of 2003. It is submitted that the periods bifurcated by the Tribunal for separate consideration have been considered in such terms and the respondent has been held not entitled to any salary for the period 04.08.1986 to 28.03.1995 but some period of the same which could be regularized to the extent of leave standing at his credit on 04.08.1986 was directed to be regularized by grant of leave, on submission of leave application and corresponding leave salary for the said period was to be paid to him and the rest period was to be treated as leave without pay for all purposes. It was further submitted that the Tribunal has granted undue indulgence to the respondent which is contrary to the factual and legal position.

Learned counsel for the respondent submits that his services were regularized with effect from 03.10.1985 and without there being any disciplinary proceeding against him or any advance order terminating his service, his continuity in service was rightly directed to be maintained by the Tribunal and accordingly, he should also be entitled to benefit for the purposes of seniority as well as grant of A.C.Ps. along with all consequential benefits. In support of his contention that the service of the respondent was regularized, he refers to paragraph 4 of the order

dated 21st August, 2012.

Having considered the rival contentions, we find substance in the submissions of learned counsel for the petitioners. The facts of the case do not show the conduct of the respondent in good light. Further, despite there being delay and laches on his part he has been fortunate to remain in service and should have been satisfied with the said position. The respondent remaining absent for an extraordinary long period without there being any application for such leave/extension of leave and on his sweet will appearing before the authority to join, the same could not have been automatic and rightly the authorities sought approval by higher officials and in the meantime due to the intervention of the Tribunal, though the direction was to allow him to join, the petitioners have shown him extraordinary indulgence by appointing him as Assistant Instructor with effect from 03.10.1985. We do not find that the import of the order was such so as to appoint him with retrospective effect when the Tribunal in its order dated 30.12.1994 in O.A. No. 143 of 1992 had only directed to permit the respondent to resume his duties as Assistant Craftsman and not for appointment on the post of Assistant Instructor, much less regularize him.

Be that as it may, the petitioners stipulated that he would not be entitled to any pay with effect from 04.08.1986 till his joining to the post and the period of absence of duty has been treated as no work no pay which shall also not count for



increment and other benefits. At Clause 9 of the same order dated 02/08.03.1995 it was clearly stipulated that in case such terms and conditions was acceptable to the respondent, he should report for duty immediately. The respondent accepted the said condition and after joining thereafter, suddenly seems to have been become wiser in the year 2003 when he again approached the Tribunal in O.A. No. 45 of 2003 against the said Clause-9 of the order allowing him to join. Once again, the Tribunal showing indulgence directed the authorities to pass a fresh order in respect of the period of absence by the respondent though observing that Clause-9 of the order was included in accordance with the liberty granted by the Tribunal. The petitioners, in terms of the order dated 29th May, 2009 passed in O.A. No. 45 of 2003, having passed a detailed order on 21st August, 2012, in which there is detailed discussion with regard to the various periods for which the respondent was absent, the reference to his services being regularized with effect from 03.10.1985 cannot factually change the position when no such regularization order has been passed and the only order is the one dated 02/08.03.1995 in which he has only been appointed on temporary basis, though with effect from 03.10.1985. Such reference cannot confer any right on the respondent and there cannot be any presumption with regard to his services being regularized. The period of his absence, during which time he was engaged in cultivation on his ancestral land, which has been admitted by the respondent in his

own statement dated 09.10.2012, also does not make out a fit case where the petitioners should be directed to pay him salary for such period.

Thus, we do not find any ground which warrants interference in the order passed by the petitioners dated 21st August, 2012 and consequently the direction by the Tribunal to the contrary, holding him entitled to seniority and continuity of service including other consequential service benefits cannot be upheld.

For the reasons aforesaid, the order dated 22nd November, 2013 passed by the Tribunal in O.A. No. 869 of 2010 is set aside and O.A. No. 869 of 2010 stands dismissed.

(Ahsanuddin Amanullah, J.)

Hemant Gupta, J I agree

(Hemant Gupta, J.)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	