

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17500 of 2008

Vijay Shankar Sharma, son of Sri Ram Subhag Sharma, resident of village-Salempur Mathiyan, P.O-Salempur, P.S.-Sidhwalia, District-Gopalganj, resididing at Mohalla-Mauna Fatak, P.O.-Mauna, P.S.-Chapra Town, District- Saran, at present posted as Correspondence Clerk (Typist), Public Heal Division, Gopalganj.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
2. The Secretary, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
3. The Engineer-in-chief, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
4. The Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
5. The Zonal Chief Engineer, Public Health Engineering Department, Muzaffarpur.
6. The Superintending Engineer, Public Health Circle, Saran at Chapra.
7. The Executive Engineer, Public Health Division, Gopalganj.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Sharma, Advocate

Mr. Abhishek Kumar, Advocate

For the Respondent/s : Mr. Harish Kumar, G.P.-32

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 07-01-2016

Regarding I.A.No.90 of 2016

I.A.No.90 of 2016 has been filed for amendment in the writ petition by addition of relief seeking quashing of Annexure-6 which is letter no.442/07 dated 17.05.2007 issued by the Chief Engineer (Mechanical) and also for considering the period between 31.03.2007 to 17.05.2007 for the purpose of granting benefits to the petitioner.

It is contended that though the document was annexed as Annexure-6 but inadvertently relief for the purpose of challenging it

could not be added at the time of filing.

Having regard to the aforementioned facts and circumstances, the petitioner is permitted to assail the Annexure-6 and also permitted to raise the issue of consideration of period between 31.03.2007 to 17.05.2007 for granting benefits to him.

I.A. No.90 of 2016 stands disposed of.

C.W.J.C.No.17500 of 2008

I have heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of the letter dated 17.05.2007 as contained in Annexure-6 issued by the Chief Engineer (Mechanical) addressed to the Superintending Engineer, Public Health Engineering Department, Chapra by which he has directed the Superintending Engineer to reinstate the petitioner from the date of his joining. He also submits that once the order of reinstatement was passed after the order of termination was found to be bad, the reinstatement should have been made from the date of his termination itself. Though the petitioner was not entitled for the back wages for the purpose of regularization of his service, however, that period has to be notionally counted for all other purposes including promotion and grant of A.C.P. etc.

Short facts which would be necessary for consideration of this case stand enumerated as under :



The petitioner was initially appointed on the post of Correspondence Clerk which was cancelled vide order dated 31.01.1991. That order was challenged before this Court by filing CWJC No.1318 of 1991 which was disposed of vide order dated 29.06.1992 by a Division Bench of this Court holding that the petitioner was appointed on temporary basis in 1990 and there was no justification on the part of the authority in not taking steps for making regular appointment for about one year before the impugned order of termination was passed, thus, a direction was given to the respondents to take steps for regular appointment against the post held by the petitioner and allow him an opportunity to compete for such appointment along with other eligible candidates. In compliance of the aforesaid direction, such process was initiated and finally, the petitioner was again appointed vide memo no.186 dated 31.03.1993, as contained in Annexure-3, however, again an order was issued on 21.03.2002 by the Superintending Engineer, P.H.E.D. removing him from the service on the ground that his appointment was irregular. Thereafter, the petitioner again approached this Court by filing CWJC No.3152 of 2003 which was allowed vide order dated 19.03.2007 by a Single Judge Bench of this Court vide Annexure-4 holding that the petitioner's removal was on the basis of an order of removal passed in the case of another employee by a Division Bench of this Court in LPA No.1252/99, however, the aforesaid decision of the Division



Bench was set aside by the Supreme Court and the concerned employee, namely, Abhay Kumar Pandey was directed to be reinstated without back wages. Learned Single Judge held that the basis of removal of the petitioner having gone, there was no occasion for his removal from the service as such action with respect to the aforesaid Abhay Kumar Pandey was already found to be bad by the Supreme Court. As a result, the petitioner was also directed to be reinstated on the post of Correspondence Clerk but without any back wages. The petitioner, in terms of the aforesaid order, approached the Superintending Engineer concerned vide Annexure-5 but the matter remained pending and finally Annexure-6 came to be passed by the Chief Engineer directing the Superintending Engineer concerned to allow the petitioner to be reinstated from the date of his joining but without back wages. Actually, this part of the decision is under challenge as the petitioner claims that reinstatement would always mean that it should be from the date when the order of removal was passed because that order was found to be bad. However, since he did not work for the period he remained ousted from his job, salary for that period was not allowed by this Court in view of such decision taken by the Apex Court in the case of Abhay Kumar Pandey.

A counter affidavit has been filed on behalf of the State defending the aforesaid action. It is contended that the petitioner has been given all the benefits from 17.05.2007 which is the date of

passing of the order of the Chief Engineer.

On appreciation of rival contention, I find force in the submission made on behalf of the petitioner. From perusal of Annexure-4, which is an order passed by a Single Judge Bench of this Court in favour of the petitioner, it would appear that in fact the removal from service of the aforesaid Abhay Kumar Pandey as confirmed by the Division Bench of this Court in LPA No.1252/99 was set aside by the Supreme Court meaning thereby that removal was bad and since the order passed in LPA No.1252/99 had formed basis for ousting the petitioner by the authority, learned Single Judge has held that the petitioner would also be entitled for the same benefit which would mean that his removal was also found bad, therefore, a direction was given to reinstate him which can have only one meaning that the petitioner would be reinstated from the date of his ouster and for that reason only, it has been clarified that though he would be reinstated but would not be entitled for the back wages. In my view, reinstatement would always mean from the date of ouster unless a date of reinstatement is given in the decision.

Secondly, the petitioner, after the aforesaid decision of the Court approached before the Superintending Engineer on 26.03.2007 for his reinstatement and joining, however, he was allowed to join on 17.05.2007 without any fault on his part. Therefore, in my view, his joining should be considered from 26.03.2007 itself

and he would be entitled for all the monetary benefits from that date. Having held so, though the petitioner would not be entitled for the back wages but the period of his ouster from the office would have to be treated notionally to be in service for all other benefits such as counting the period for promotion or granting ACP etc. However, since back wages have not been allowed, monetary benefits would only be permissible from the date of his joining, i.e., 26.03.2007.

This writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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