

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19714 of 2011

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1. Anil Kumar Singh
2. Mukesh Kumar Singh
3. Manoj Kumar Singh
4. Santosh Kumar
5. Sheo Shankar Kumar, all are son of Late Ramanand Singh, R/o
village- Kanauji Tola, P.S.- Gauri Chak, (Gopalpur), District- Patna
..... Petitioners

Versus

1. The State of Bihar through its Principal Secretary Health
Department, Govt. of Bihar, Patna
2. The Director-in-Chief Health Department, Govt. of Bihar, Patna
3. The Civil Surgeon-cum-Chief Medical Officer, Begusarai
4. The Additional Chief Medical Officer, Begusarai
..... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary
For the Respondent/s : AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 28-06-2016 Heard Sri Sanjay Kumar Tiwary, learned counsel for
petitioners and learned A.C. to Govt. Advocate - 10.

The present petition was filed by the original
petitioner, with a prayer to set aside an order dated 10-01-2011
i.e. **Annexure - 7** to the writ petition, whereby the claim of the
petitioner for payment of salary from 20-12-1996 to 28-05-2001
was rejected.

During the pendency of the present writ petition, the
original petitioner died and thereafter, legal heirs were
substituted who are now petitioners.



Learned counsel for petitioner(s) submits that earlier since the original petitioner remained absent for more than five years, without any show cause notice, he was dismissed from the service. The said dismissal order was assailed by the petitioner by way of filing a writ petition, vide C.W.J.C. No. 3059 of 1999. The said writ petition was allowed by order dated 17-05-2000, on the ground that even though provision contained in Rule 76 of the Bihar Service Code was declared *ultra vires*, in exercise of the same power, the termination order was passed. Thereafter, the petitioner was allowed to join.

It has been argued that the petitioner though had given joining, he was not paid salary for the period i.e. from 20-12-1996 to 28-05-2001. The original petitioner thereafter superannuated on 30-06-2001. He submits that prior to one month of his retirement, the petitioner was allowed to join. However, despite representation filed by the petitioner, the petitioner was not paid salary for the period, as indicated hereinabove. He submits that in view of order dated 26-11-2009 passed in C.W.J.C. No. 12158 of 2009, the petitioner filed representation before the Director-in-chief and thereafter, the Director-in-chief vide impugned order has rejected the claim of the petitioner. He submits that without any fault of the

petitioner, the petitioner was denied his salary for the said period.

Learned State counsel has opposed the prayer of the petitioner(s). He submits that earlier almost for the same relief, the original petitioner approached this Court by filing a writ petition i.e. C.W.J.C. No. 12158 of 2009. This Court disposed of the said writ petition on 26-11-2009, mainly on the ground that after such a long time the writ petition may not be entertained.

Besides hearing, I have also perused the material available on record. Fact remains that petitioner superannuated w.e.f. 30-06-2001. After more than eight years, the petitioner earlier filed a writ petition claiming salary for the period from 20-12-1996 to 28-05-2001. This Court by a reasoned order declined to exercise its writ jurisdiction mainly on the ground that original petitioner himself slumbered over his right and he had already been retired in 2001 itself. Ofcourse, while declining, this Court had observed that '*petitioner has option to represent his case before the appropriate authority*', but this Court had issued no direction for deciding the case in favour of the petitioner. On perusal of the impugned order, it is evident that the claim of the salary for aforesaid period was already rejected in the year 2001 itself. Once on the issue, this Court in earlier writ

petition had already adjudicated, there is no reason to again
examine the claim of the petitioner.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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