

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 274 of 2013

IN

Civil Writ Jurisdiction Case No. 5884 of 2010

- =====
1. Principal Secretary Panchayati Raj Department, Bihar, Patna
 2. Director, Panchayati Raj, Bihar, Patna
 3. Agriculture Production Commissioner, New Secretariat, Patna

.... Appellant/s

Versus

Arun Kumar S/O Sri Shambhu Nath Prasad R/O Mohalla- Masjid Road, P.O.-
Pupri, District- Sitamarhi

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr Ravi Bhardwaj, AC to GA 5

For the Respondent/s : Mr Prashant Kumar, Advocate

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-06-2016

The present intra-Court appeal has been filed by the State in the Department of Panchayati Raj being aggrieved by the final order passed on 12.09.2011 in CWJC No 5884 of 2010 (Arun Kumar –Versus- State of Bihar & Others) whereby the writ petition, filed by the writ petitioner-appellant in this appeal, was allowed.

2 Let it be noted that in the writ proceedings, in spite of specific orders being passed for filing counter affidavit on behalf of Panchayati Raj Department, no steps were taken and a counter affidavit was filed by the Department of Agriculture alone.



3 The grievance of the writ petitioner was that he was a permanent employee of the Bihar State Agriculture Marketing Board. By virtue of the Bihar Agriculture Produce Market (Repealing) Act 2006, the Bihar Agriculture Produce Market Act, 1960 was repealed in entirety. The validity of the Repealing Act was challenged before this Court by some of the employees. Its validity was upheld in view of provisions of Section 6 of the Repealing Act and the undertaking given to the Court by the Government that no employee would suffer. Section 6 of the Repealing Act provided that so far as employees, who were working under the Marketing Board at the time of its repeal, would continue to get the same remuneration and benefits which they were entitled to prior to the repeal till a suitable scheme for their absorption in Government Department or Corporation is finalized and they are absorbed therein. By virtue of this provision, the services of the writ petitioner was carried on under the Administrator of the Marketing Board after repeal and he received remuneration accordingly. Vide Memo No 2627 dated 07.09.2008, the Administrator of the Marketing Board, pursuant to Government decision, passed an order relieving, inter alia, the petitioner with effect from 08.09.2008 to join in the Rural Development Department in the Directorate of Panchayati Raj. The case of the writ petitioner was that he gave his joining before the Principal Secretary, Directorate of



Panchayati Raj on 29.12.2008 but it was not entertained. He, thereafter, kept trying to join. His joining was not accepted. He ultimately filed the writ petition apprehending that if his joining was not accepted, he would superannuate on 30.06.2010 which would deprive not only of his interregnum salaries but other retiral dues. While the writ petition was pending, he again tried to join. He also represented to the Parent Department that is before the Agriculture Production Commissioner who also wrote to the Panchayati Raj to take a decision with regard to his joining. It was also indicated in that letter of the Agriculture Production Commissioner that writ petitioner had also moved the High Court and the writ petition was pending.

4 In the writ proceedings, specific orders were passed by the Writ Court for counter affidavit to be filed on behalf of Panchayati Raj but counter affidavit was only filed on behalf of the Agriculture Department and not on behalf of Panchayati Raj.

5 Under those circumstances, the writ petition was allowed with a direction to pay his arrears of salary from the date of application of joining that is 29.12.2008 till his superannuation and settle whatever retiral dues to which he is entitled. A belated Letters Patent Appeal was filed by the Panchayati Raj Department. The plea now taken is that by virtue of Resolution of the State Government as circulated by Memo No 5661 dated 02.09.2008, it was, inter alia,



provided in Clause 7 thereof that all the persons, who are relieved for joining any other Government Department, must join the Department so assigned within 15 days. Failure to join would amount to cessation of their employment and they would be entitled to remunerations and benefits upto the said date only treating that day to be the date of termination of service. It is further the case of the Department that as this provision is mandatory and could not be waived, his joining, which he gave beyond 15 days of the letter of relieving him, could not have been accepted.

6 Three issues in fact, arose at the first instance. Firstly, the application for joining is not in dispute. Secondly, no order was ever passed refusing to accept his joining much less communicate to the writ petitioner. Thirdly, the consequence provided for settlement of all dues was not even looked into or acted upon by the Department. The Department simply now disowns the writ petitioner. We may first tackle with the provisions as contained in Clause 7 aforesaid.

7 Clause 7 provides for a period of 15 days to join or else they would be automatically deemed to be terminated. On the face of it, such a provision would be clearly unconstitutional. There could not be any provision for automatic termination of a permanent employee nor can the 15 days period taken to be a mandatory period which could not be relaxed. There could be many reasons for not



being able to join within 15 days period. The writ petitioner has specifically pleaded, with documents, to support it that his wife was seriously ill with cancer and he had to be at different places outside Bihar for her treatment. The writ petitioner-respondent has also brought on record, in these appellate proceedings, several orders issued by the State where joining have been accepted after months of the order dated 02.09.2008 or 07.09.2008 aforesaid.

8 First coming to the validity of the Rule itself, we may note that under Bihar Service Code (for brevity, *the Code*), there was a similar provision contained in Rule 76 (b) of the Code which, inter alia, provided that if any Government employee remained absent without leave for a continuous period of 5 years, it would be deemed that the services were automatically terminated. This provision was challenged before this Court in the case of *Sohna Das Gupta –Versus- State of Bihar* since reported in 1974 PLJR 382. A Division Bench of this Court, declaring the rule to be ultra vires, clearly held that termination of service can only be after a disciplinary proceeding, for there may be justifiable reasons for the absence. There cannot be an automatic termination. On parity of reason, we have to hold that Clause 7 of the aforesaid Resolution of the Government, in so far as it provides for automatic termination, cannot be held to be valid. The writ petitioner-appellant gave valid reasons for not being able to join



immediately. Even when he gave his joining, no order whatsoever was passed, if, what the Department submits is correct, then at least some order ought to have been passed. If not, then when the Agriculture Production Commissioner wrote to the Principal Secretary in the Directorate of Panchayati Raj, some order must have been passed. No action was even taken much less with regard to the consequences provided in Clause 7 consequent to termination regarding payment of dues.

9 These only show that the Department of Panchayati Raj decided to treat the writ petitioner as a persona non-grata and forgot about it. As to the submission of the learned counsel appearing in support of the appeal that Rule 7 is mandatory and provides no relaxation, petitioner has annexed communications issued from the Panchayati Raj Department itself on 25.11.2008 and 11.12.2008 permitting people to join after 25.11.2008 and also in the month of December, 2008. If what was submitted by the learned counsel that the provisions are mandatory and no relaxation was possible then how the Department of Panchayati Raj itself extended and accepted late joining by large number of persons. State has to speak in one word. It cannot take different stands in respect of different persons arising from the same transaction. State, being State, is bound by Article 14 of the Constitution which is anti thesis of arbitrariness. The action of

the Department of Panchayati Raj, in so far as the writ petitioner-respondent is concerned, was clearly arbitrary and cannot, thus, be countenanced.

10 Petitioner was, thus, rightly allowed the relief by the learned Single Judge and we see no reason to take a different view of the matter.

11 This appeal is devoid of any merit and is dismissed as such.

12 The order passed by the learned Single Judge must now be complied with forthwith.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

U			
---	--	--	--