

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.365 of 2011

In

Civil Writ Jurisdiction Case No.10227 of 2007

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1. The State Of Bihar Through The Chief Secretary Government Of Bihar, Patna
 2. The Secretary Department Of Animal Husbandry Government Of Vihar, Patna
 3. The Director Department Of Animal Husbandry Government Of Bihar , Patna
 4. The Regional Director, Animal Husbandry, Darbhanga

... .. Appellant/s

Versus

Dr.Kaushal Kushum Son Of Bankeshwari Prasad Resident Of Village - Paroha, Police Station Manpur, District Nalanda

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. PRASHANT KASHYAP(AC-GP18)

For the Respondent/s : Mr. BINIT KUMAR, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-09-2017

Seeking exception to an order dated 2.7.2010 passed by the Writ Court in Civil Writ Jurisdiction Case No. 10227 of 2007 this appeal under Clause 10 of the Letters Patent has been filed by the State Government.

The respondent Dr. Kaushal Kushum was a student, who was prosecuting a course of study i.e. Ph.D. in the Indian Veterinary Research Institute, Izzatnagar, Bareilly, U.P.. While he was prosecuting the study, he was appointed as Mobile Veterinary Doctor by the State of Bihar and in the midst of the course he joined the duties and after performing duties for about a year he



sought 18 months study leave as is provided under the Bihar Service Code so that he would complete his studies. The matter came to this Court and on the basis of an interim order passed, he was permitted to proceed on leave and thereafter he prosecuted the course and completed the course and the said writ petition was disposed of by a Bench of this Court directing the department to consider the case of the petitioner for grant of leave under the Bihar Service Code and take a decision. A decision was taken by the Government to grant the respondent-employee leave i.e. extraordinary leave under Rule 243 of the Bihar Service Code and his prayer for granting him study leave under Section 204 of the Bihar Service Code was rejected on the ground that for availing of leave under Section 204 of the Code he should have completed five years of service and as he has completed only one year service he is not entitled to study leave. Challenging this action the present writ application was filed and the writ court found that even though the State Government may be right in applying the provisions of Rule 243 of the Code but it found that a Division Bench of this Court in the case of **Dr. Anil Prasad Gara and others Vs. State of Bihar & Ors.: 1991(2) PLJR 384** pertaining to Doctors working in the Health Department, has considered identical question wherein earlier the Doctors working in the



Health Department sought for grant of study leave of 18 months under Section 204 of the Code and in their cases also as they had only one year of service, did not qualify the requirement of Rule 204 to have five years of service, the writ court found that in the decision in the case of **Dr. Anil Prasad Gara** (supra), the Division Bench has analysed various aspects of the matter and directed the State to grant benefit under the provisions of Rule 204 read with Rule 205 of the Bihar Service Code. The writ court after in extenso dealing with the observations made by the Division Bench, has remanded the matter back to the State Government to take a fresh decision after considering the observations of the Division Bench. In doing so, we are of the considered view that the learned writ court has not committed any error warranting reconsideration.

Accordingly, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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