

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19978 of 2013

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1. Jagat Narayan Singh Son Of Late Ram Ratan Singh Resident Of Village -
Sheikhpura, P.S - Riviganj, District - Saran

.... Petitioner/s

Versus

1. The State Of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department Of Revenue and Land Reforms, Bihar,
Patna
3. The Additional Secretary, Department Of Revenue and Land Reforms, Bihar,
Patna
4. The Principal Secretary, Department Of Finance, Bihar, Patna
5. The District Magistrate, Siwan
6. The Bihar State Industrial Development Corporation, through its Managing
Director.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinay Raj, Adv.

For the Respondent/s : Mr. Sunil Kumar Pandey, A.C. to SC 14

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-01-2017

In the present writ application, the petitioner has prayed for quashing the order passed vide Memo No. 11(4) dated 10th January, 2013 by the Principal Secretary, Revenue and Land Reforms, Government of Bihar, as contained in Annexure-14. The petitioner has also prayed for a direction to be issued to grant him pension treating him to be in continuous service till 12th July, 1982 while he was on lien in the Bihar State Industrial Development Corporation (for short 'BSIDC').

2. It is an admitted fact that the petitioner was appointed on the post of Lower Division Clerk on 7th March, 1956 in the



Collectorate, Siwan. Thereafter, in the light of D.O. Letter No. 5005 dated 1st November, 1974 of the Managing Director of the BSIDC, he was relieved to join BSIDC. Subsequently, on his permanent absorption in BSIDC, his lien was terminated with effect from 12th July, 1982. It is submitted by the learned counsel for the petitioner that on attaining the age of superannuation the petitioner retired in the year 1993.

3. The BSIDC is a Government Company registered under the Companies Act, 1956.

4. The petitioner claimed before the State Government for grant of pension treating him to be in continuous service from 7th March, 1956 to 12th July, 1982 while he was on lien in the BSIDC.

5. The claim of the petitioner was rejected by the State Government vide Memo No. 1019 dated 21st September, 1996 on the ground that his permanent absorption in the BSIDC was on his own request and with his consent without there being prior approval of the Finance Department.

6. Being aggrieved by the aforesaid Memo No. 1019 dated 21st September, 1996, the petitioner filed a writ application before this Court vide C.W.J.C. No. 6247 of 2006 seeking quashing of the same and prayed for grant of pensionary benefits treating him to be in continuous service till 12th July, 1982.



7. The aforesaid writ application was disposed of on 11th May, 2011 with a direction that the undisputed amount shall be paid to the petitioner within a period of one month if it has been already not paid and if there is any dispute, the same shall be settled within a period of three months.

8. The contention of the petitioner is that after the aforesaid order dated 11th May, 2011 though some payment was made to the petitioner but his claim for pro-rata pension was rejected reiterating the same ground vide impugned order dated 10th January, 2013 contained in Annexure-14 to the present application.

9. As the petitioner was of the view that the respondents have not complied with the order passed by this Court in C.W.J.C. No. 6247 of 2006, he had filed a contempt petition before this Court vide MJC No. 4031 of 2012 but in view of the aforesaid order dated 10th January, 2013, the contempt petition bearing MJC No. 4031 of 2012 was dismissed as withdrawn vide order dated 20th June, 2013 giving liberty to the petitioner to challenge the said order.

10. Thereafter, the instant writ application has been filed challenging the order dated 10th January, 2013 passed by the Principal Secretary, Revenue and Land Reforms, Government of Bihar.

11. Mr. Abhinay Raj, learned counsel for the petitioner submitted that the petitioner never exercised option to be absorbed in



the BSIDC and his absorption in the BSIDC was without his consent. He submitted that it is not correct to say that the petitioner was sent to BSIDC on his own request and the said plea has been taken by the respondents just in order to deny the legitimate claim of the petitioner.

12. The next claim of the petitioner is that at the relevant time the State Government servant was entitled to receive pension in case of completion of 25 years of service. He contended that since the petitioner joined the service of the State on 7th March, 1956 and his lien of previous post got terminated with effect from 12th July, 1982, he had already completed 25 years of service. Hence, he was entitled to receive pro-rata pension.

13. Per contra, learned counsel for the State would submit that the petitioner's posting and permanent absorption in BSIDC, Patna was on his request with his consent without prior approval of the Finance Department. He would submit that in the light of the circular issued by the Finance Department vide Memo No. 5190 dated 30th April, 1976, the petitioner is not entitled to receive pension from the Government. He would also submit that apart from the facts stated above on merits, the writ application is fit to be dismissed on the principle of inordinate and unexplained delay and laches in approaching the Court.



14. On query made by the Court, Respondent No.5 has stated on oath that the D.O. Letter No. 5005 dated 1st November, 1974 of the Managing Director, BSIDC whereby the petitioner was relieved to join BSIDC is not traceable.

15. I have heard learned counsel for the parties and perused the record.

16. Under the Pension rules when a Government employee is permitted to be absorbed in a Government Company, pro-rata pension has to be calculated with reference to his service under Government at the time of absorption but the actual payment of pension is made from the date of his actual retirement from the institution in which he was absorbed.

17. In the present case, as noted above, the petitioner was relieved to join BSIDC on lien in compliance with the D.O. Letter No. 5005 dated 1st November, 1974 of the Managing Director of the BSIDC and his lien on previous post was terminated with effect from 12th July, 1982 as he was permanently absorbed in BSIDC since that day.

18. There is nothing on record to show that pro-rata pension with respect to the past service of the petitioner under the Government at the time of final absorption in July, 1982 was ever calculated. The consistent case of the State is that the petitioner's



posting and permanent absorption in BSIDC was on his own request and with his consent and without the approval of the Finance Department.

19. Vide Memo No. 5190 dated 30th April, 1976 the Finance Department clarified entitlement to receive pension by a Government employee on permanent transfer to a Government Company, which is extracted hereunder :-

“*Subject – Permanent transfer of Government servant to Government Companies/Corporation-grant of retirement benefits.

It is to invite a reference to Finance Department Memo No. P.C.-Pen-1044/70/1950F., dated 18th February, 1974 on the above subject and to clarify as follows –

- (i) All orders relating to the permanent transfer of Government servants to Government Companies/Corporations and the grant of retirement benefits to them should be issued by the Administrative Department in consultation with the Finance Department.*
- (ii) There should be no retrospective absorption of employees initially sent on deputation to such a Company/ Corporation as it may lead to a claim for refund or non-payment of leave/pension contribution which cannot be withheld or refunded under the existing rules.*
- (iii) As has already been indicated in the Finance Department Memo No. 1950F., dated the 18th February, 1974 referred to above, all cases of absorption of Government servants on a permanent basis in public undertaking should be examined keeping in view the public interest involved. **In the cases of a Government servant who is elected for***



appointment in an autonomous body (including public undertakings) on the basis of his own application, the transfer should not be deemed to be in the public interest and Government will not accept any liability to pay any retirement benefits or for carry forward of leave for the period of service rendered under Government. [* Vide F.D. Memo No. PC.11-40-55/75-5190F., dated 30.4.1976]

(emphasis mine)

20. It would be evident from the aforesaid Memo dated 30th April, 1976 that in case of a Government servant elected for appointment in an autonomous body (including Government Company/Corporation) on the basis of his own application, the transfer would not be deemed to be in public interest and the Government would not be liable to pay retirement benefits.

21. True it is that the State conceded that the D.O. Letter No. 5005 dated 1st November, 1974 is not traceable but the same would not cause any benefit to the petitioner for the simple reason that once the State has contested the matter and disputed the assertion made by the petitioner, it is for the petitioner to first establish his right and then seek remedy. He cannot claim himself entitled to receive pension on the basis of failure of the respondents to produce D.O. Letter No. 5005 dated 1st November, 1974 of the Managing Director of the BSIDC on the basis of which the petitioner was relieved to join



BSIDC especially for the reason that though the petitioner retired from BSIDC in the year 1993, he approached this Court for the first time in 2006 seeking relief for grant of pension. If the relevant letter is not traceable, the petitioner himself is responsible for the same as the case relates to old record.

22. Although the Constitution does not prescribe any period of limitation for filing a writ application under Article 226 of the Constitution, this Court may examine the belated or stale claim and deny relief to the party if he is found guilty of laches.

23. It is contended by the learned counsel for the petitioner that after disposal of C.W.J.C. No. 6247 of 2006 some payments have been made to the petitioner but the claim of pension has been negatived by order dated 10th January, 2013. At this stage, it would be of salience to note that though the order dated 21st September, 1996 by which the petitioner's right to receive pension was rejected first by the State Government was challenged in the aforesaid writ application but the same was not allowed by this Court. On examination of record, I find that the impugned order dated 10th January, 2013 is nothing but reiteration of the previous order dated 21st September, 1996.

24. In my considered opinion, the petitioner cannot be allowed to re-agitate the matter, which was raised before this Court



and was not allowed in the earlier round of litigation.

25. In view of the discussions made hereinabove, I see no merit in the present writ application. The application is accordingly dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-01-2017
Transmission Date	

