

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1286 of 2017

IN

Civil Writ Jurisdiction Case No. 12840 of 2016

=====

Daya Shankar Singh, Son of Late Krishna Ballabh Singh, Resident of Shankar Niwas, North of Panchwati Chowk, Gangjala, Saharsa, P.S.-Saharsa, District-Saharsa

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
2. The Director, Department of Industries, Govt. of Bihar, Patna.
3. The Joint Secretary Industries Department, Govt. of Bihar, Patna,
4. The Principal Secretary, Department of Industries-Cum-Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan East Gandhi Maidan, Patna,
6. The Accountant General, Bihar, Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s	:	Bindhyachal Singh, Advocate Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. R.S. Singh, AC to AAG-7
For A.G.	:	Mr. Kumar Priya Ranjan, Advocate Mr. Niraj Kumar, Advocate
For BIADA	:	Mr. Lalit Kishore, Advocate General Mr. Piyush Lall

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-10-2017

Seeking exception to an order dated 19.08.2017 passed by the Writ Court in Civil Writ Jurisdiction Case No. 12840 of 2016, this appeal has been filed under Clause-10 of the Letters Patent.

The petitioner was initially appointed in the Industries Department in the year 1976. In the year 1978, he was transferred to the Darbhanga Industrial Area Development Authority,



now Bihar Industrial Area Development Authority. Contenting that he is required to be considered as a government servant and paid full pensionary benefits, the writ petition in question was filed claiming the pensionary benefits and leave encashment of 240 days. The benefits were claimed on the basis of judgment rendered by Hon'ble Supreme Court in identical situation in the case of State of Bihar and Others versus Kamal Bansh Narayan Singh in Civil Appeal No. 1684 of 2005 as is evident from page 87 of the writ petition on 2nd of August, 2007 and the subsequent order passed implementing the same in the case of Madan Mohan Prasad Sinha vide Annexure-15 on 25.06.2010. The petitioner claims similar benefits based on the judgment in the case of Kamal Bansh Narayan Singh and implemented in the case of Madan Mohan Prasad Sinha. However, before the learned Writ Court, an objection was raised by the State Government to say that the petitioner, after his retirement in the year 2010 had filed the writ petition after a period of more than six years and therefore, this petition is liable to be dismissed on the ground of delay and certain submissions were made to say that the benefits of judgment in the case of Kamal Bansh Narayan Singh (supra) cannot be extended to the petitioner. Learned Writ Court in para 5 of the aforesaid judgment dismissed the writ petition by so observing :-

“5. Having considered the rival contentions, the Court does not find any merit in the present writ application. The submissions made by learned counsel for the respondent no. 5 relating to grant of pension and 240 days of earned leave is the correct proposition, both on facts as well as in law, and



further the petitioner not having approached the Court within a reasonable period of time and moving only after six years, definitely indicates delay and laches on his part. Mere filing of representation is no substitute for moving before the Court within a reasonable period of time moreso, after having accepted the alternative retrial benefits in lieu of pension.”

In our considered view, once the Supreme Court in the case of Kamal Bansh Narayan Singh (supra) has held that the employees who are on deputation and who are subsequently absorbed in BIADA are entitled to claim the entire service for the purpose of pensionary benefits, in the case of the present petitioner also who was initially in the Industries Department when his services were transferred to the authorities, was entitled for consideration of the services rendered in the Industries Department and we find no reason to deny the same to him as his case is squarely covered by the law laid down in the case of Kamal Bansh Narayan Singh and implemented by the Department in the case of Madan Mohan Prasad Sinha and others.

Keeping in view the aforesaid, we are of the considered view that the learned Writ Court committed an error in dismissing the writ petition only on the ground of delay when the litigation policy of the State Government is to implement a decision in the case of an employee to all other similarly situated employees irrespective of the fact that whether they have approached this Court or not. Once, taking note of these circumstances, we have decided various cases, we see no reason to deny the similar benefits to the petitioner.



In view of the above, the appeal is allowed. The order passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 12840 of 2016 on 19.08.2017 is quashed and it is directed that the claim of the petitioner shall be settled as has been done in the case of various employees based on the judgment rendered in the case of Kamal Bansh Narayan Singh (supra) and identical benefits as has been granted to Madan Mohan Prasad Sinha by virtue of the order Annexure-15 dated 25.06.2010 shall be extended to the petitioner also within a period of three months from the date of receipt of the certified copy of the order. All consequential benefits accruing to the petitioner shall also be granted within a period of three months.

With the aforesaid, the appeal stands allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10/10/2017
Transmission Date	NA

