

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12840 of 2016

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

.... Petitioner/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

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the State	:	Mr. Amit Prakash, G.A. 13
		Mr. Sanjay Kumar, Advocate
For the BIADA	:	Mr. Kumar Ravish, Advocate
For the Accountant General	:	Mr. Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-08-2017

Heard learned counsel for the petitioner; State;

Accountant General and the respondent no. 5.

2. The petitioner has moved the Court for the following reliefs:

“(i) For necessary direction upon the respondent authorities of the Bihar Industrial Area Development Authority (hereinafter to be referred to as BIADA only) or the State Govt. to ensure payment of pension to the petitioner because the Petitioner was appointed initially with the State Govt. and his services were pensionable but later on, the State Govt. transferred his



services to the Darbhanga Industrial Area Development Authority along with the Murliganj Industrial Area and thereupon, he continuously worked in the Darbhanga Industrial Area Development Authority, which later on, merged into Bihar Industrial Area Development Authority.

(ii) For necessary direction upon the respondent authorities to make payment of balance amount of gratuity upon grant of the benefit of 6th pay revision, upto date dearness allowance admissible to the State Govt. employees and increments, as the State Govt. has enhanced the Maximum limit of gratuity from Rs. 3,50, 000/- to Rs. 10,00,000/- w.e.f. 2009.

(iii) For necessary direction upon the respondent authorities to make payment of leave encashment of 300 days to the Petitioner similar to the State Govt. employees as the Petitioner has been paid leave encashment of 240 days like an employee of BIADA.

(iv) For necessary direction to the respondent authorities to make payment of interest @ 12.05% to the Petitioner on all the retiral dues as the Petitioner remained deprived from the benefits due to the inaction on the part of the respondent authorities.

(v) For necessary direction upon the respondent authorities to make payment of cost of litigation of Rs. 20,000/- to the Petitioner as the Petitioner has been forced into such litigation on account of inaction on the part of the respondent authorities.

(vi) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. Learned counsel for the petitioner submitted that though he was appointed initially in the Industry Department in the year 1976 but in the year 1978, he was transferred to the then Darbhanga Industrial Area Development Authority, now the Bihar



Industrial Area Development Authority, he was required to be considered as a Government servant and is entitled to full pensionary benefits. It was submitted that even the terms of such transfer, in the initial order of the State dated 15.06.1978, mentions that the persons so transferred shall be entitled to increase in pay and holiday as was available to the Government servant. It was submitted that once the same has been accepted, encashment of only 240 days of earned leave is arbitrary for the reason that since then the Government has been allowing encashment up to 300 days. Learned counsel submitted that as far as pension is concerned, a similarly situated person namely, Kamal Bansh Narayan Singh had moved the Court and the matter travelled till the Hon'ble Supreme Court and he was held entitled to such benefits. It was further submitted that relying on the same judgment one Madanmohan Prasad Sinha was also granted pensionary benefits. Learned counsel for the petitioner submitted that he has filed representation.

4. Learned counsel for the respondent no. 5 submitted that the comparison of the case of the petitioner to that of Kamal Bansh Narayan Singh and Madanmohan Prasad Sinha is erroneous for the reason that their initial period under the State Government was more than 10 years, which entitled them to pensionary benefits as 10 years of service is the period which qualifies for pension. It was



further submitted that from the admitted position, the service of the petitioner under the State i.e., Industry Department, was for about two years only. Learned counsel submitted that in the case of Kamal Bansh Narayan Singh, from the order of the Hon'ble Supreme Court itself it is clear that he was only sent on deputation and later on, the Government had confirmed his services in the year 1999. With regard to earned leave, learned counsel submitted that the contention is equally erroneous for the reason that as on 15.06.1978, the existing leave and pay increase, as admissible to Government employees, was made applicable in the case of the petitioner and similarly situated persons, but once their services were transferred to an autonomous organization, henceforth it is to be governed by the specific decision taken by that Authority, which in the present case entitles the petitioner to a maximum encashment of 240 days of earned leave, which has also been paid to the petitioner. It was further contended that the writ petition is fit to be dismissed on the ground of delay and laches for the reason that the petitioner having superannuated in the year 2010 taking all retiral benefits, which were in lieu of pension, without any demur, has moved the Court after about six years.

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 retiral benefits in lieu of pension.

6. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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