

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.635 of 2015

In

Civil Writ Jurisdiction Case No. 137 of 2014

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Satya Deo Dwivedi son of Late Namdeo Dwivedi, Resident of Mohalla-Karailiya , P.S. + P.O. - barh, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department , Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources Department , Purnea.
4. The Superintending Engineer, Mahananda Flood Control Circle, Katihar.
5. The Executive Engineer, Flood Control Division, Katihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madan Prasad Singh No-2, Advocate
Mr. Arun Kumar Singh, Advocate
For the Respondent/s : Ms. Binita Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

5 14-07-2017

Heard parties.

The petitioner filed C.W.J.C. No. 137 of 2014 assailing the decision of the Principal Secretary, Water Resources Department-cum-Appellate Authority, contained in Annexure-9, by which he has passed the order that petitioner is not entitled to any payment for the period from 21.04.2010, the date of making application for voluntary retirement up to 31.12.2011, i.e, the date on which his application for voluntary retirement was accepted but the Executive Engineer being head of the office prevented him



from carrying out the official work for the period mentioned above and payment of salary for the above period was not made on the ground of non-attending duty although he was willing to do.

It appears that petitioner had earlier moved before a Single Judge Bench of this Court by filing C.W.J.C. No. 6724 of 2013 for the said purpose and the petition was disposed of vide order dated 22.04.2013, as contained in Annexure-7 to this writ petition, granting following directions :-

“ Considering the fact that the petitioner had sought his voluntary retirement on account of his own deteriorating health and had in fact also mentioned in his application that on account of his illness that he was not in a position to discharge his duty, the issue relating to payment of salary for the period from 21.04.2010, the date on which he had sought voluntary retirement and up to 31.12.2011 when such voluntary retirement was allowed under the order of the Chief Engineer has to be inquired into by a higher authority. Since the Executive Engineer, Superintending Engineer and Chief Engineer, have already taken their one view or the other this Court would direct the Principal Secretary of the Water Resources Department to examine from the records as to whether the petitioner had discharged his duty in the period 21.4.2010 to 31.12.2011. If he would find documentary evidence of such working of the petitioner or he being deliberately dissuaded or denied to work on his post under the order of the Chief Engineer, despite his being willing to work, he would pass an order for payment of salary of the petitioner to the aforesaid period. On the other hand if he would find that the petitioner had voluntarily ceased working even before getting his order of voluntary retirement and/or had abstained from his work on account of his physical constraint/illness he would pass an order rejecting the claim of the petitioner for payment of salary by giving reasons.”



In compliance of the aforesaid direction the Principal Secretary, Water Resources Department, passed the order, contained in Annexure-9, which was assailed by filing C.W.J.C. No. 137 of 2014 and which has been disposed of by the impugned order passed by the learned Single Judge holding that petitioner was given ample opportunity along with appearance of respondent authorities. Evidence of attendance of the petitioner was also produced but there was clear evidence of absence of the petitioner from duty. As such, no relief can be granted.

However, at the time of hearing, Mr. Madan Pd. Singh learned counsel for the appellant has drawn attention of this Court towards Annexure-5 to this writ petition, i.e., even prior to passing of the order in C.W.J.C. No. 6724 of 2013, contained in Annexure-7 to this writ petition, which was earlier filed by the petitioner. Annexure-5 is a letter dated 17.09.2011 written by the Chief Engineer of the Water Resources Department to the Executive Engineer. It indicates that though the petitioner has stated in his letter seeking voluntary retirement that he was not keeping good health but matter was sent to the higher authority without proper scrutiny. Allegation has been levelled against the Executive Engineer of shirking away from his responsibility. Not only that, it is further stated that in the



relevant register an entry was made the reason for petitioner's seeking voluntary retirement was disableness which was not the case and for that reason he had not been allowed to enter appearance in the register and has not been given salary etc. for about 17 months landing him in difficulties. Several allegations have been made against the Executive Engineer. Finally a direction was given that, till the petitioner is in service, i.e., up to the acceptance of request of voluntary retirement, he should be given salary etc. It does not appear that the Principal Secretary had noticed this letter. At the same time, it also does not appear that, though the letter was on record, however, the same was even brought to the notice of the learned Single Judge and, as such, it was not considered. In fact, learned Single Judge has stated that the Court was willing to give further indulgence to petitioner provided there would be evidence to belie the finding given by the Principal Secretary but no evidence could be brought to the notice of the learned Single Judge.

In such situation, this Court feels that since Annexure-5 was neither brought to the notice of the learned Single Judge nor was it considered, it would be proper to dispose of this appeal by granting liberty to the petitioner to file a review application so that the matter could be considered by the learned Single Judge.



Further liberty is granted to the petitioner to bring in to the notice of the learned Single Judge the other relevant materials also which would be available to him.

Accordingly, this Letters Patent Appeal stands disposed of.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

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