

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17125 of 2008

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1. Pramila Devi, W/o Late Balmiki Prasad Singh, Resident of Village – Kathar, P.O. + P.S. Sherghati, Distt. – Gaya.
 2. Ravi Ranjan, S/o Late Balmiki Prasad Singh, Resident of Village – Kathar, P.O. + P.S. Sherghati, Distt. – Gaya.
 3. Shashi Ranjan, S/o Late Balmiki Prasad Singh, Resident of Village – Kathar, P.O. + P.S. Sherghati, Distt. – Gaya.
 4. Vivek Kumar, S/o Late Balmiki Prasad Singh, Resident of Village – Kathar, P.O. + P.S. Sherghati, Distt. – Gaya.
 5. Aparna, D/o Late Balmiki Prasad Singh, Resident of Village – Kathar, P.O. + P.S. Sherghati, Distt. – Gaya.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The District Magistrate, Arwal (Jehanabad).
3. The Deputy Collector, Land Reforms and Incharge Establishment, Distt. – Arwan (Jehanabad).
4. The Anchal Adhikari, Anchal – Arwal, Distt.-Arwal (Jehanabad)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Pd. Singh, Sr.Adv.
Mr. Mukesh Kumar Singh, Adv.
For the Respondent/s : Mr. Vasant Vikas, AC to GP - 12

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 10-04-2017

Heard Sri Rajendra Prasad Singh, learned senior counsel assisted by Sri Mukesh Kumar Singh, learned counsel for the petitioner and learned A.C. to Govt. Pleader – 12.

2. During pendency of the writ petition, the petitioner left for heavenly abode, thereafter, substitution petition was filed and vide order dated 30-09-2015, legal heir(s) were allowed to be substituted after expunging the name of deceased petitioner.

3. The original petitioner had approached this Court



invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order, contained in Memo No. 69 dated 10-02-2006 and Memo No. 8 dated 25-01-2007 issued by the District Magistrate, Arwal/respondent no. 2, whereby; the claim of the petitioner for his salary for the period from 01-10-1978 to 31-08-1985 was rejected. It has further been prayed to direct the respondents to grant salary from 01-10-1978 to 31-08-1985 and also grant consequential benefits.

4. Short fact of the case is that earlier while exercising power under Rule - 76 of the Bihar Service Code, the petitioner's services was dispensed with on the ground of remaining absent for more than five years. The order whereby his services was dispensed with was challenged by the petitioner before this Court, vide C.W.J.C. No. 10368 of 1999. A Bench of this Court, vide order dated 11-02-2005 (**Annexure - 3** to the writ petition), considering the fact that provision under Rule 76 of the Bihar Service Code was already declared *ultra vires* and was *non-existent*, this Court quashed the order whereby service of the petitioner was dispensed with. During the pendency of the earlier writ petition, the petitioner had also attained the age of superannuation and as such, the petitioner was granted liberty to file a detailed representation within a period of six weeks and thereafter, the competent authority was directed to



dispose of the same by a speaking order within a period of three months thereafter. Subsequently, on petition filed on behalf of the petitioner, vide M.J.C. No. 1441 of 2005, the period for filing representation was further extended for two weeks and earlier order dated 11-02-2005 was modified to the extent, vide **Annexure - 4** to the writ petition. After the order of the writ court, the petitioner filed representation, vide **Annexure - 5** to the writ petition, before the District Magistrate-cum-Collector, Arwal. The said representation was dated 27-07-2005, vide Annexure - 5 to the writ petition. After filing of the representation, the District Magistrate-cum-Collector examined the same and thereafter, he concluded that period in between 01-10-1978 and 31-08-1985 was unauthorized absence and as such, it was held that petitioner was not entitled to get anything for the said period. However, regarding remaining period i.e. period of suspension and period till the date of his superannuation i.e. 30-09-1990 was treated as work period and order was issued for making payment for the said period. Despite the fact that claim of the petitioner for his salary for the period from 01-10-1978 to 31-08-1985 was rejected in the month of February 2006, the petitioner again approached the Collector for the same relief. Thereafter, the Collector, Arwal by its order dated 25th January, 2007 reiterating the order passed by his predecessor held



that the petitioner was not entitled to get any salary for the period of unauthorized absence i.e. 01-10-1978 to 31-08-1985. It is evident that prior to passing of second order i.e. order dated 25th January, 2007 (**Annexure - 1** series at running page 16), the petitioner had filed a contempt petition, vide M.J.C. No. 397 of 2006, in which, show cause and supplementary show cause was filed alongwith relevant documents and it was informed that petitioner had already been paid his arrears of salary for the period from September, 1985 to September, 1990 alongwith Group Insurance amount, leave encashment amount, provisional pension and gratuity were already sanctioned and sent to Accountant General. After noticing the fact regarding payment, this Court by its order dated 19-10-2006 (**Annexure - 6** to the writ petition) dropped the contempt proceeding. In the last paragraph of the order, this Court observed as ***“Considering the aforesaid fact, the proceeding of contempt is dropped. In case the petitioner has some discrepancies he may move before the appropriate authority concerned.”***

5. Sri Singh, learned senior counsel for the petitioner has drawn attention of this Court to the fact that in the year 1979, the petitioner was put under-suspension. According to him, after suspension, the petitioner was regularly appearing before the enquiry officer and as such, it was not a case of unauthorized



absence. He has drawn attention of this Court to statement made in paragraph – 6 of his reply to the counter affidavit to substantiate that petitioner had participated in the departmental proceeding.

6. Learned State counsel submits that it is true that initially, the petitioner was put under-suspension, but subsequently he remained unauthorisedly absent and that absence period had exceeded more than five years and as such, vide order dated 12-01-1988, the petitioner's service was dispensed with. However, the said order was assailed by the petitioner and this Court, vide **Annexure – 3** to the writ petition, set aside the same on the ground that the provision contained under Rule - 76 of the Bihar Service Code was declared *ultra vires* and was non-existent. He further submits that in compliance with the order of the writ court i.e. order dated 11-02-2005 in C.W.J.C. No. 10368 of 1999, it has been accepted by the petitioner that the petitioner had filed representation, vide **Annexure – 5** to the writ petition. By way of referring to **Annexure – 5** to the writ petition, learned State counsel submits that no plausible explanation nor any supportive document was produced by the petitioner to justify his period of absence and this was the reason that the learned Collector rejected his claim of salary for the said period. The Collector has also noticed that no factual evidence was produced by the petitioner, which is evident



from **Annexure – 1** series i.e. order dated 10-02-2006.

7. Besides hearing learned counsel for the parties, I have also perused the materials on record. Fact remains that petitioner's service was dispensed with in the year 1988 primarily on the ground of absence from duty for more than five years. Ofcourse, the said order was set aside by a Bench of this Court observing therein that Rule - 76 of the Bihar Service Code was already declared *ultra vires* and it was non-existent, but fact remains that reason for dismissal was absence for more than five years without any notice to the department. Though the order, whereby the services were dispensed with, was set aside by this Court, it does not mean that this Court had condoned the period of absence. This Court only granted liberty to the petitioner to approach the authority concerned justifying his period of absence. On perusal of **Annexure – 5** to the writ petition i.e. representation filed by the petitioner in compliance with earlier order of the writ court, the Court is satisfied that no plausible explanation was given by the petitioner regarding his absence. Only on the ground that in reply to the counter affidavit, a stand has been taken that petitioner was participating in departmental proceeding, this Court may not accept the contention of learned senior counsel for the petitioner that petitioner was appearing. That too in a case where his services were dispensed



with primarily on the ground that unauthorisedly and without intimation, he remained absent for more than five years.

8. Once this Court had interfered with the order and granted liberty to the petitioner to justify his absence and petitioner failed to justify his absence, the Collector was right in rejecting the claim of his salary for the said period. Moreover, regarding remaining period, entire payment was already made, which fact has been noticed by a Bench of this Court in its order dated 19-10-2006 in M.J.C. No. 397 of 2006 whereby the contempt proceeding was dropped. I do not find any ground to interfere with either of two orders i.e. order dated 10-02-2006 and 25-01-2007 passed by the Collector, Arwal (Annexure – 1 series).

9. The writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

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