

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16622 of 2007

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1. Naresh Prasad son of Late Neman Prasad, Resident of village – Parasawanna, P.S. – Tharthari, District – Nalanda, presently posted at Lower Division Clerk, Tube well Division, Barh.
 2. Suresh Prasad son of Sri Singeshwar Prasad Singh, resident of village – Ghostawan P.S. – Silao, District – Nalanda, presently posted as Lower Division Clerk, Tube well Division, Bihar sharif.

.... Petitioner

Versus

1. The State of Bihar through Secretary-cum-Commissioner, Department of Minor Irrigation, Government of Bihar, Patna.
2. The Deputy Secretary, Department of Minor Irrigation, Government of Bihar, Patna.
3. The Project Coordinator, Tube well, Department of Minor Irrigation, Beshweraiya Bhawan, Patna-1.
4. The Superintending Engineer, Tubewell Department of Irrigation, Government of Bihar, Shekhpura, Patna-14.
5. The Executive Engineer, Tube well Division, Barh, Patna.
6. The Executive Engineer Tube well Division, Bihar Sharif, Nalanda.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-04-2017

Heard Sri Sanjay Kumar, learned counsel for the petitioner and learned A.C. to Govt. Pleader – 24.

2. This is the 3rd occasion, on which, two petitioners have approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India. This time petitioners have prayed for directing the respondents to pay difference of arrear of salary with effect from the month of June, 1979 to 31-12-1995 as the petitioners were promoted as Moharrir-cum-Lower Division Clerk in the month of June, 1979, however said order was cancelled on



10-08-1979. Subsequently, petitioners were allowed to again function as Moharrir-cum-L.D.C., which was done in compliance with the judgment of this Court dated 25th July, 1994 passed in C.W.J.C. No. 8493 of 1990 (**Annexure – 1** to the writ petition).

3. It is case of the petitioners that petitioner no. 1 was initially promoted as Moharrir/L.D.C. by order dated 31-05-1979 and petitioner no. 2 was promoted as Moharrir/L.D.C. w.e.f. 01-06-1979. However, subsequently without any rhyme and reason, by order dated 10-08-1979, their promotion was cancelled, which compelled petitioners to approach this Court by filing a writ petition, vide C.W.J.C. No. 333 of 1988. The said writ petition was disposed of on 27-09-1988 and the matter was remitted back for examining the representation and considering the claim of the petitioners. The representation of petitioners was rejected on 09-08-1989 and thereafter, petitioners filed second writ petition i.e. C.W.J.C. No. 8493 of 1990. In the said writ petition, again petitioners prayed for quashing of order dated 10-08-1979, whereby petitioners' promotion as Moharrir/L.D.C. was cancelled. Petitioners this time also assailed the order dated 09-08-1989, whereby the claim for payment of salary of the petitioners was rejected. A Bench of this Court by a detailed judgment set aside both the orders and writ petition was allowed on 25th July, 1994. Copy of the order of the



writ court has been brought on record, vide **Annexure – 1** to the writ petition.

4. Learned counsel for petitioners submits that in compliance with the order of the writ court, the petitioners were allowed to function as Lower Division Clerk (for short “LDC”) with effect from January, 1996. Learned counsel for petitioners has drawn my attention to Annexure – 2 series to the writ petition to substantiate that initially, steps were taken to make payment of arrear of salary, but no payment was made and thereafter, the petitioners were constrained to approach again to this Court by filing the present writ petition, which was filed in the month of December, 2007. It has been argued by learned counsel for petitioners that once the cancellation order, whereby; promotion of petitioners, as Moharrir, was set aside by this Court, the status of the petitioners, as Moharrir, was restored from the date of issuance of cancellation order. According to learned counsel for petitioners, after the order of the writ court, the petitioners’ status, as Moharrir, was restored from the date of cancellation i.e. 10-08-1979.

5. In the writ petition, a specific plea has been taken that even though the petitioners’ promotion, as Moharrir, was cancelled, due to heavy work, petitioners were asked to function as Moharrir and they discharged the duties as such, however; they were not paid



salary.

6. In this case, a counter affidavit has been filed on behalf of respondent no. 1 to 6 and alongwith counter affidavit, a letter no. 4784 dated 04-10-2006 has been brought on record, as **Annexure – A** to the counter affidavit.

7. Learned State counsel, by way of referring to fact disclosed in the counter affidavit as well as **Annexure – A** to the counter affidavit, submits that it is true that cancellation order, whereby petitioners' promotion was cancelled on 10-08-1979, was set aside by the writ court in C.W.J.C. No. 8493 of 1990, there was no specific direction for payment of salary. He further submits that since petitioners had not worked during the said period, as Moharrir, petitioners were not entitled to get the salary of Moharrir. It has been argued that petitioners have been given their salary, as Moharrir, from the date on which the petitioners were again allowed to function as LDC, in compliance with the order of the writ court. He further submits that the petitioners were granted notional benefit.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that petitioner no. 1 was promoted as Moharrir on 31-05-1979 and petitioner no. 2 was promoted as Moharrir w.e.f. 01-06-1979. The said promotional order was cancelled on 10-08-1979. Once the



order whereby promotion of petitioners was cancelled on 10-08-1979 and same order was set aside by this Court, in normal course, it will be presumed that petitioners' status as Moharrir-cum-LDC was restored from the date on which for the first time i.e. in the month of June, 1979 they were promoted. Meaning thereby that it will be deemed that petitioners were continued as Moharrir from the earlier date. It is also evident from **Annexure - 1** to the writ petition that earlier petitioners' promotion as Moharrir was cancelled on 10-08-1979 on the plea that promotion order was not issued by the competent authority, whereas, this Court in its judgment dated 25th July, 1994 had noticed that both the petitioners were selected by a selection committee presided over by the Chief Engineer, who was the competent person to promote/select petitioners as Moharrir. Meaning thereby that removal of petitioners as Moharrir was considered, as incorrect & illegal order, and this was the reason that this Court set aside the order of cancellation and subsequent order, whereby representation/claim of the petitioners was rejected. This suggests that the petitioners were illegally prevented from functioning as Moharrir/LDC.

9. In view of facts and circumstances of the present case, the principle of 'No Work No Pay' shall not be applicable, whereas, in the writ petition, petitioners have claimed that due to heavy



work, even though, their promotion as Moharrir was cancelled, they were asked to discharge the duties of Moharrir.

10. Be that as it may, the Court is of the opinion that once the order of cancellation of promotion was set aside by this Court and the petitioners' status was restored, the petitioners are entitled to get all financial benefit, not notional benefit only.

11. So far as **Annexure – A** to the counter affidavit is concerned, learned counsel for petitioners submits that said order was never communicated to the petitioners, only he had noticed this fact from the counter affidavit.

12. In view of facts and circumstances, the **Annexure – A** to the counter affidavit shall not come in way in granting the financial benefit i.e. arrear of salary for the period, as claimed in the writ petition.

13. The writ petition is allowed with direction to pay all the salary and other benefits for the period, during which, petitioners were restrained from functioning as Moharrir/LDC as per order of earlier cancellation.

14. Accordingly, the respondents are directed to pay entire salary and all benefits to the petitioners for the period, as indicated hereinabove. The payment must be made within a period of four months from the date of receipt/production of a copy of this



order. It is made clear that if within aforesaid time, payment is not made to the petitioners, the petitioners shall be entitled to claim interest at the simple rate of 8% per annum, which shall be calculated from the date when claim was raised by the petitioners. In that eventuality, the State authority would be at liberty to recover the interest amount from the pocket of concerned officer/official responsible for non-implementation of the order of this Court within time.

15. The writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.04.2017
Transmission Date	N/A

