

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1321 of 2016

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1. Sri Bimal Chandra Singh Son of Late Ram Chandra Prasad Singh Resident of
village - Baruari, P.O. Kewatsa, P.S. Gaighat, District - Muzaaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Agriculture Production Commissioner, Department of Agriculture, Bihar,
Patna
3. The Principal Secretary Department of Finance, Old Secretariat, Patna, Bihar
4. The Principal Secretary, General Administration Department, Old Secretariat,
Patna, Bihar
5. Deputy Secretary, General Administration Department, Old Secretariat, Patna
6. The Secretary, Department of Agriculture, New Secretariat, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.

For the Respondent/s : Mr. Ashok Kumar Choudhary- AAG13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-12-2017

Heard Mr. Kumar Kaushik learned counsel for the petitioner
and learned counsel for the State.

The petitioner prays for the following reliefs:

- “i. For issuance of order, direction or writ of Mandamus or any other appropriate writ for restraining the respondents from treating the absorption of the petitioner, who was earlier an employee of the erstwhile Bihar Agriculture Marketing Board in government service as a fresh appointment and for further direction to the respondent authorities to grant continuity of service in accordance with section 6 of the Bihar Agriculture Produce Market (Repeal) Act, 2006 (herein after referred to as the Repeal Act).
- ii. For issuance of order, direction or writ of Mandamus or any other appropriate writ for directing the respondents to grant all the consequential benefit like entitlement to hold pension scheme, seniority in the cadre and other



- benefits which would accrue to the petitioner upon the grant of continuity of service.
- iii. For issuance of order, direction or writ of Mandamus or any other appropriate writ for directing the respondents to pay the salary of the petitioner from 02.09.2008 to 30.11.2011.
 - iv. For issuance of order, direction or writ of Mandamus or any other appropriate writ for directing the respondents to grant the benefit of assured career progression to the petitioner after holding that the petitioner is entitled to his absorption in government service along with the benefit of entire passed service rendered in the erstwhile Marketing Board.
 - v. For issuance of any other order or direction which Your Lordship may deem fit in the interest of justice, equity and good conscience.”

The facts on record transpire that the petitioner was an employee of the erstwhile Bihar State Agriculture Marketing Board (hereinafter referred to as the ‘Marketing Board’), which was dissolved under the Bihar Agriculture Produce Market (Repeal) Act, 2006 repealing the Bihar Agriculture Produce Market Act, 1960 and the Rules framed thereunder. It is in the light of the stipulations present in the Repeal Act as well as the judgments and orders passed by this Court that efforts were initiated for absorbing the employees of the since dissolved ‘Marketing Board’ and as a consequence, the services of the petitioner was adjusted against the post of Panchayat Supervisor in the Department of Panchayati Raj. Although Mr. Kumar Kaushik appearing for the petitioner informs that a posting order to that effect issued on 02.09.2008 but a copy of the same has been



suppressed by the petitioner before this Court and the reasons are very obvious. Instead of joining the post which primarily came as a largesse and equity based decision of absorbing employees of dissolved organization, the petitioner chose to contest the absorption itself by filing a writ petition giving rise to C.W.J.C. No. 8012 of 2004. The writ petition was filed by the Association of Employees alongwith the petitioner and one other.

Vide interim order passed on 26.9.2008 at Annexure-2 directions were issued to the respondents to accept the joining, which was subject to final outcome yet, the petitioner did not choose to join the post. The said writ petition was heard with other cases and vide judgment and order passed on 27.7.2010 at Annexure-3, orders were issued to absorb the petitioner and others in the replacement scale on which they served in the 'Marketing Board' before dissolution as well as for continuity of service.

The petitioner yet did not join because the posting was not to his liking. Prima facie it was a disobedience of the order of this Court because vide interim order passed in the said batch of writ petition on 26.09.2008 the authorities were directed to accept the joining of the absorbed employees which obviously included the petitioner who did not choose to give his joining. It is only when the petitioner got a post of his choice that he gave his joining only on 17.09.2011 in



Agriculture Department as admitted by him at paragraph 19 to the writ petition.

In my opinion, the petitioner should have in obedience of the order passed on 26.9.2008 given his joining on the post offered but he did not abide by the directions issued by this Court and yet is seeking a direction for payment of salary for his absence period. The counter affidavit explains all and mentions at paragraph 11 that the petitioner after giving his joining on 24.12.2008 remained unauthorisedly absent from 25.12.2008 to 14.9.2011 and again gave his joining on 15.9.2011 whereafter he was relieved to join the Agricultural Department on 16.9.2011. Considering the defiance and the indisciplined conduct of the petitioner in remaining absent from office for a period of more than 3 years, the department has been very gracious to treat the unauthorized absence of the petitioner as extra ordinary leave of 1183 days while providing him with continuity of service for other purposes. While paragraphs 5 to 7 of the counter affidavit deals with the reasons of denial of salary to the petitioner, paragraph 8 to 13 answers his other reliefs.

Though Mr. Kaushik submits that even though the respondents have answered the grant of progression under the A.C.P. Scheme of 2003 but the petitioner is also eligible for 3rd progression under the Modified Assured Career Progression Scheme for which no response



has been given but I find that no such relief has been prayed by the petitioner.

Having heard learned counsel for the parties and for the reasons aforementioned, I find that while the relief to which the petitioner is entitled, has already been extended to him, in so far as payment of salary for the period 2.9.008 to 30.11.2011 is concerned, admittedly the petitioner even after giving joining, did not perform duty rather absented himself during this period of over 3 years and thus rightly on the principles of ‘no work no pay’, his claim has been rejected. No reason thus exists for grant indulgence to the prayer made for payment of salary for the absence period. The writ petition is disposed of with liberty to the petitioner if so advised to raise his grievance in respect of grant of progression under Modified A.C.P which shall be considered and disposed of on its own merits in accordance with law.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
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