

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9429 of 2001

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Umesh Prasad

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. AJAY KUMAR PANDEY

For the Respondent/s : Mr. (SC10)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-03-2018

No one appears on behalf of the petitioner. Counsel for the State is present.

This writ petition has been filed for quashing the order dated 04.09.1997 issued by the Commissioner-cum-Special Secretary, Public Works Department, Patna (Annexure-1) whereby and whereunder a Commissioner has rejected the representation of petitioner dated 17.07.97 in the light of the order dated 23.05.97 passed in C.W.J.C. No.11096 of 1992 and also by the impugned order it has been held during the period in between 03.08.87 to 06.06.88 the petitioner was never in awaiting of posting rather he deliberately failed to join the transferred place of posting notified and the period of his absence can be accepted except by granting earned leave and no other leave can be granted to him. The short fact of this case the petitioner was Assistant Engineer and at the relevant time he was



posted in the Planning Division of Chief Engineer, North Wing, Building Construction Department, Govt. of Bihar and during the year 1986, he was posted at Aurangabad Division and from there, he was transferred to Darbhanga vide order dated 05.01.1987 and in compliance of the said order, he handed over the charge to his successor on 13th April, 1987. As per the petitioner, he remained under leave from 01.05.87 to 02.08.87, for the said period, the petitioner was granted leave and after expiry of the said leave, he has reported to his duty at head office Patna. On 03.08.1987 and remained there waiting for posting. In spite of the request for posting, respondents-authorities did not pass any order, that compelled him to file an application to the Commissioner-cum-Secretary, Road Construction Division on 29.02.1988 bringing to his notice to the fact that he was waiting for posting since 03.08.87, in spite of more than six and half months had passed but he was not posted, ultimately a notification dated 04.06.1988 was issued and the petitioner was posted in the Building Construction Department, Govt. of Bihar and in compliance of the order, the petitioner joined the new place of posting on 07.06.1988, thereafter, another notification was issued on 30.6.1988, accordingly that notification he was posted against the post of one Jogi Rai in the office of Chief Engineer, North Wing, Building Construction Department, Govt. of Bihar in the said notification, the



name of petitioner was appearing at serial No.47, on that basis, he joined the new post on 07.07.1988 and requested for the payment of his salary for 03.08.1987 to 06.06.1988.

In the counter affidavit, the State has taken plea that he was transferred from Aurangabad to Darbhanga but he conveniently gone for the leave enjoined more than what was available to the credit of petitioner. Instead of joining the Darbhanga, he joined Patna at Head Office and when it was brought to notice of waiting for posting, then ultimately a notification was issued for his posting, so the period he remained purportedly waiting for posting, cannot be entertained as the petitioner was transferred to Darbhanga after the leave was over, it would have been proper on the part of the petitioner to join Darbhanga not to the Patna.

Having considered the aforesaid facts, the period of his absence and claiming to be waiting of posting raised by the petitioner is not acceptable to this Court in view of the fact that when the petitioner was transferred to Aurangabad to Darbhanga he had gone for a leave, the propriety was demanded that after the leave period was over he should have joined the place of transferred post which was assigned but not to the Patna, i.e., head office. So the State is completely correct in refusing to make payment of the period purported to be waiting for posting but that period would be adjusted against the



leave, if possible, whatever nature of leave is available so much so, the Government may grant extraordinary leave. The period will not be treated to be the break in service which will not cause prejudice to him in the matter of retrial benefit at the end of his service period.

With this observation, this writ petition is disposed of.

(Shivaji Pandey, J)

Sanjeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

