

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10619 of 2000

=====

Bal Mukund Sinha, son of Late Tej Narain Singh, resident of village –
Hujra, P.S. – Gaurichak, P.O. – Jaitia Bazar, District – Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner cum Secretary, Road Construction Department,
Government of Bihar, Patna.
3. The Commissioner cum Secretary, Department of Rural
Development, Government of Bihar, Patna.
4. The Deputy Development Commissioner, Gaya.
5. The Engineer-in-Chief cum Special Secretary, Public Works
Department, Bihar, Patna.
6. The Chief Engineer, Road Construction Department, Bihar, Patna.
7. The Accountant General, Bihar, Patna.
8. The Provident Fund Officer, District Provident Fund Office, Patna.
9. The Treasury Officer, Rohtas at Sasaram.

.... Respondents

=====

Appearance :
For the Petitioners : Mr. D.K. Sinha, Sr. Advocate
For the State : Mr. Mr. Sami Kumar, A.C. to S.C.16
For the Accountant General, : Mr. Rak Kishor Choubey, Advocate
Bihar, Patna.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 15-02-2018

Heard learned senior counsel for the petitioner
and learned counsel representing the State as also learned
counsel representing the Accountant General, Bihar, Patna.

2. The petitioner has moved this Court invoking
its extraordinary writ jurisdiction for the following reliefs:

*1. To quash memo no. 10862(S) dated 15.12.1999
whereunder and whereby the petitioner has been*



sanction and granted leave from 31.03.76 to 31.12.1992.

II. To quash the remark on last pay certificate dated 10.04.2000 whereunder and whereby a direction for recovery has been given pursuance to above said order.

III. For a direction to the respondents to accept joining of the petitioner from 23.10.90 which is illegally been accepted from 13.05.93.

IV. For a direction to make payment of difference of salary with appropriate fixation to the same time to time granting time bound promotion.

V. For payment of interest at the rate of 18% till date of all payment.

3. Some of the facts pleaded on behalf of the petitioner as regards his going on medical leave while he was posted under the Building Division at Sasaram because of some mental ailment are not in dispute. It is the case of the petitioner that he remained on medical leave from 25.07.1981 to 22.10.1990 while he was working at Sasaram. During this period when he was on medical leave his service was confirmed as permanent Assistant Engineer vide notification as contained in Memo No. 2901 dated 02.08.1984 (Annexure-2).

4. The case of the petitioner is that after recovery from ailment and upon getting a certificate of



fitness he submitted his joining on 23.10.1990 in the Public Works Department, Road Division, Patna and since then he continued in service there. It is his case that after his joining he was referred to medical board constituted by the respondents for his fitness and medical board found him fit, and accordingly, by Notification No. 2547(S) dated 13.05.1993, the Department of Public Works, Road, issued acceptance letter of joining of the petitioner but with effect from the date of issuance of letter meaning thereby that his joining was accepted w.e.f. 13.05.1993.

5. Learned senior counsel representing the petitioner has drawn attention of this Court towards the order dated 09.10.1998 passed in CWJC No. 8355/1998 by a co-ordinate Bench of this Hon'ble Court, which has been brought on record by way of Annexure-7 to the writ application. It is his submission that in fact after the petitioner submitted his joining and was rendering his service in the Department, he was neither being paid his salary nor was being allowed to superannuate despite his making request to the authority concerned on attaining the age of superannuation. For this reason he had to move this



Hon'ble Court. After a direction was issued in the said writ application to consider the representation of the petitioner raising all his grievances/claim in detail, he filed a detailed representation as contained in Annexure-8 to the writ application to the Secretary, Road Construction Department, Government of Bihar, Patna. Thereafter, the Road Construction Department issued a letter bearing No. 3011(S) dated 22.04.1999, wherein the petitioner was informed that the relevant records pertaining to his service were not available in the office of the Accountant General, Bihar, therefore if he is in possession of the salary slip, service history and leave particulars then the same should be made available for further action. Regarding the payments for the period claimed by the petitioner particularly the disputed period from 23.10.1990 till the date of his retirement, the petitioner was informed that because his joining has been accepted w.e.f. 13.05.1993, i.e., the date of issuance of notification and he had already retired w.e.f. 31.12.1992, records have been sent to the Finance Department for making necessary correction in the Notification and for taking a decision in the matter of regularization of the



period between 23.10.1990 to 31.12.1992. Subsequently, the letter as contained in Annexure-10 has been issued to the Office of the Accountant General, Bihar with a copy to the present petitioner vide memo no. 10862(G) dated 15.12.1997. From letter Annexure-10 to the writ application, it appears that in the peculiar circumstance of this case the Road Construction Department took a decision whereunder the period between 31.07.1976 to 31.12.1992 have been treated in the following manner:

- (1) From 31.03.1976 to 26.09.1976 it has been treated as a converted leave and,
- (2) The period between 27.09.1976 to 31.12.1992 i.e. till the date of retirement, has been treated as extraordinary leave.

6. Learned senior counsel representing the petitioner submits that it is the specific case of the petitioner that he was on medical leave from 25.07.1981 to 22.10.1990 and that he had been working after submitting joining w.e.f. 23.10.1992. It is submitted that the said statement of the petitioner has not been specifically denied on behalf of the respondents State. Referring to Annexure-4



dated 10.12.1993 which is a Notification issued by the Road Construction Department, learned senior counsel has submitted that in the said Notification this petitioner has been shown as 'waiting for posting' and then he has been posted in Rural Development Department. Annexure-4/A has also been shown to demonstrate that he was shown waiting for posting. Vide Annexure-5 to the writ petitioner represented that he has already attained age of superannuation, therefore he should be retired and relieved from service.

7. Learned senior counsel further submits that the petitioner was sent for medical examination, a team constituted by the Department and the medical team found him fit whereafter a notification dated 13.05.1993 was issued by the Department accepting the joining w.e.f. the date of Notification. The said joining should have been accepted w.e.f. 23.10.1990, but because of the delay on the part of the Department in issuing Notification, the petitioner is being deprived of his salary and other emoluments for the said period.

8. On the other hand, learned counsel



representing the State submits from para 3 of the counter affidavit sworn by the Joint Secretary, Road Construction Department that the petitioner joined his service on 03.04.1957 on Overseer till 30.06.1963, on 03.04.1969, he was granted status of permanent Overseer, and on 18.06.1975, he was promoted in selection grade Junior Engineer, firstly he was granted leave for a period of six months, i.e., 31.03.1976 to 24.09.1976, as he was mentally sick and remained absent from his duty and thereafter he had been granted medical leave since 25.07.1981 to 22.10.1990, i.e., more than nine years. It is further submitted that though the fact that petitioner had submitted his joining on 23.10.1990 has not been denied in para 4 of the counter affidavit, the respondents State has denied the claim of the petitioner that he was rendering service during the period 23.10.1990 till the date of his superannuation. The reason for not allowing joining as explained is that the fitness of the petitioner for duty required confirmation by the Board.

9. Learned counsel submits with reference to the statements made in paragraph-8 of the counter affidavit



that it has been specific stand of the respondents State that the petitioner had not been working during this period and he had remained absent from duty. He further submits that the writ petition filed by the petitioner is only half-hearted attempt to come out with the consequences of Annexure-10 because the petitioner never challenged the Notification dated 13.05.1993 by which it was made clear that the acceptance of joining will take effect only from the date of issuance of the Notification. It is his submission that since the petitioner had already retired w.e.f. 31.12.1992, the Notification dated 13.05.1993 was erroneous to that extent and it should be read as having taken effect from 31.12.1992 when the petitioner retired, therefore, the submission is that his joining was not accepted by the Department and it was never communicated to the petitioner prior to his attaining the age of superannuation on 31.12.1992.

10. Having heard learned senior counsel for the petitioner and learned counsel representing the State, this Court is of the considered opinion that the facts, as appearing from paragraph 3 and 4 of the counter affidavit show that the submission of joining by this petitioner on



23.10.1990 is an admitted position. The only reason for not accepting joining is that it required fitness certificate from the Board. It is not the case of the respondent that the petitioner did not co-operate in presenting himself before the Board. Annexure-9 issued under the signature of the Deputy Secretary to the Government, Road Construction Department, Government of Bihar, shows that there is an admission on the part of the respondents that the Department was itself not sure as to why the petitioner received only half salary for the period 01.01.1976 to 31.03.1976 and why he was not paid his salary for the period 01.04.1978 to 24.07.1981. Regarding the period 25.07.1981 to 22.10.1990 there are plausible explanations and reasons provided as to why this period has been treated as extraordinary leave by relaxing Rule 76 of the Bihar Service Code. Annexure-9, however does indicates that there had been some discrepancy in the matter of issuance of the notification dated 13.05.1993 accepting the joining of the petitioner with effect from the date of issuance of the said notification as the petitioner had already attained the age of retirement on 31.12.1992. Apparently when Annexure-4 &



4/A were issued in the year 1993 and 1994 the petitioner was shown waiting for posting. There is no averment in the counter affidavit that subsequent to passing of Annexure-9, dated 22.04.1999, the Finance Department has issued any other notification correcting the mistake, however Annexure-10 is said to have been issued after obtaining sanction from the Finance Department. It gives a clear impression to this Court that the petitioner had submitted his joining on 23.10.1990, but for a fitness certificate by a duly constituted Medical Board, his joining was not dealt with in the Department for a long time and the petitioner was never communicated about the fate of his joining. Since, there is no denial in the counter affidavit that the petitioner had submitted his joining on 23.10.1990, as claimed by him, this Court has reasons to believe that in not dealing with the joining submitted by the petitioner and in not sending him for medical test to a duly constituted Medical Board, it was the Department, who was at fault. The petitioner was never communicated even otherwise. It is also an admitted fact that at some point of time belatedly he was sent for medical examination by the Board, the date when he was sent for



medical examination has not been disclosed either by the petitioner or by the respondents, but fact remains that in the medical examination this petitioner was found fit and his joining was accepted though erroneously w.e.f. 13.05.1993. This will lead to an issue as to whether because of the fault on the part of the Department in not attending the joining submitted by the petitioner and taking appropriate steps for about two years if the petitioner was not allowed to work (though he claims that he has worked). Will he not be entitled to his salary and emoluments for the said period when the Department because of its own fault created a situation for the petitioner whereunder he could not render his service? He was shown waiting for posting in Annexure 4 and 4/A to the writ petition. Further what were the status of the petitioner after expiry of his leave of six months on 24.09.1976 till 24.07.1981 is also required to be examined. This aspect of the matter would be required to be looked into in order to reach to a just and proper conclusion as to whether in the facts appearing in the case the petitioner would be entitled for the benefits of salary as claimed by him and particularly for the period from 23.10.1990 to



31.12.1992.

11. In the counter affidavit no doubt a statement has been made that the petitioner remained absent between 23.10.1990 till the date of his superannuation but in the opinion of this Court the statement of the State respondents is only vague and not a specific denial of the fact that the petitioner has pleaded in his writ application saying that he had submitted his joining on 23.10.1992. There is no statement at all in paragraph 3 and 4 of the counter explaining the stand of the respondents with regard to the period after 24.09.1976 till 24.07.1981.

12. In the facts and circumstances of the case, in view of the issues which have arisen for consideration in this case, I would set aside the impugned order as contained in Annexure-10 and direct the Principal Secretary, Road Construction Department, Government of Bihar to consider the entire matter afresh in the light of the discussions made hereinabove, and as regards the period from 23.10.1990 till 31.12.1992 if it is found from the records that the petitioner had submitted his joining on 23.10.1990 but thereafter due to the fault on the part of the Department in processing his



joining for over two years he was not allowed to work, a decision will be taken by the Principal Secretary considering that the petitioner was deprived of rendering his service not because of his own will or volition but because of the fault on the part the Department and in such circumstance he would be entitled for his salary and emoluments for the said period. If the facts reveal otherwise and it is found that despite an opportunity given to the petitioner to work after submitting his joining he remained absent from duty and did not render service on his own will, he would certainly not be entitled for salary and emoluments for the said period. Appropriate decision be also taken with regard to the period indicated above. The decision must be taken within a period of four months from the date of receipt/production of a copy of this order.

13. This Writ Application is disposed off with the directions and observations aforesaid.

(Rajeev Ranjan Prasad, .J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2018
Transmission Date	NA

