

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.433 of 2018

IN

Civil Writ Jurisdiction Case No. 12349 of 2013

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Upendra Choudhary, son of late Ganesh Choudhary, R/o Itahari, Post Office-
Phutkichak, P.S.Gogari, District-Khagaria.

.... Appellant/s

Versus

- 1.The State of Bihar.
- 2.The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 3.The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
- 4.The Engineer-in-Chief (Middle) Water Resources Department, Government of Bihar, Patna.
- 5.The Executive Engineer, Rural Development Special Division (Divisional Commissioner) Munger, District-Munger.
- 6.The Superintending Engineer, Rural Development Special Circle, Munger, District.
7. The Divisional commissioner, Munger Division, Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shally Kumari, Adv.

For the Respondent/s : Mr. ANJANI KUMAR- AAG4

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 27-06-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 15.12.2016 passed by the learned writ Court in C.W.J.C No.12349 of 2013 by which the learned writ Court has refused to issue a writ of mandamus directing the respondent no.6 to pay the salary of the petitioner for the period 08.02.2008 to 17.10.2011.

From the narration of facts it appears that the petitioner was transferred to the office of Chief Engineer, Water Resources Department, Purnea, vide order dated 07.02.2008, but he gave his joining there after a lapse of substantial period only on 21.08.2008. Although the petitioner claimed that he



had submitted his joining at Purnea but his joining was not accepted, the admitted fact which has emerged from the pleadings is that the petitioner did not join the office of the Executive Engineer, Purnea, where he was posted. It is the case of the petitioner that he was not relieved by the office of the Executive Engineer, Rural Works Department, Munger, who ultimately relieved him vide his letter dated 29.06.2011 with retrospective effect from 06.01.2008. The petitioner thus, submitted that he was not at fault as he was not relieved, the question of his joining to the Headquarter at the office of the Chief Engineer and then in the office of the Executive Engineer does not arise.

The learned writ Court found that the petitioner was repatriated to his parent department i.e., the Water Resources Department, vide order dated 26.11.2007, the petitioner had given his joining on 07.01.2008 and remained there waiting for posting up to 07.02.2008, thereafter, he was asked to join the office of the Chief Engineer but after a long time the petitioner submitted his joining in the office of the Chief Engineer but when he was posted to the office of Executive Engineer he never joined there. The learned writ Court found that the petitioner has been paid salary for the period he remained waiting for posting at the Head Office. There was no explanation from the petitioner as to what prevented him to give his joining in the office of the Chief Engineer for such a long time. The only plea taken by the petitioner that he was not relieved by the office of the Executive Engineer, Rural Works Department so his joining was not accepted by the Executive Engineer could not be substantiated by producing any cogent material showing even prima facie that the petitioner had submitted his joining in the office of the Executive Engineer, Water Resources Department.

Even though learned counsel representing the appellant has attempted to assail the impugned judgment of the learned writ Court reiterating



his submissions, we find no material to take a view that the petitioner had submitted his joining in the office of the Executive Engineer, Water Resources Department at Purnea. From Annexure-5 to the writ petition it appears that the petitioner had submitted his joining in the office of the Chief Engineer, Water Resources Department, Purnea, on 21.08.2008 and was posted on the vacant post of Bathnaha, in the Irrigation Division, Purnea, but the petitioner did not join there.

In these circumstances, we do not find any error in the impugned judgment of the learned writ Court.

The Letters Patent Appeal has no merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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CAV DATE	
Uploading Date	10.07.2018
Transmission Date	

