

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7597 of 2000

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1. Abhimanyu Prasad Verma son of Bishno Prasad Verma, B/2, Vivekanand Park, Patliputra Colony, P.S. - Patliputra, District – Patna
2. Ramshray Singh son of Late Rajendra Singh, Road No. 1, Quarter No. 24, New Patliputra Colony, P.S. - Patliputra Colony, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Science and Technology Department, New Secretariat, Patna
2. Director, Science and Technology Department, New Secretariat, Government of Bihar, Patna
3. Managing Director, Bihar State Agro-Industries Development Corporation Limited, Sinha Library Road, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. A. B. Ojha Sr. Advocate Mr. Sanjeev Kumar Advocate Mr. A. K. Singh Advocate
For the Respondent/s	:	Mr. Raghwanand G.A.-11 Mr. Aanjay Kumar Tiwari AC to GA-II

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 27-11-2018

Heard the learned counsel for the parties.

The petitioners have prayed for quashing of the order dated 11.03.2000, contained in Memo No. 370, by which Respondent No. 1 has refused to absorb the petitioners and further for a direction of a consequential benefits to be accorded to them.



It has been submitted on behalf of the petitioners that the order refusing to absorb them is in teeth of the High Court's order passed in C.W.J.C. No. 9550 of 1998 on 09.12.1999, whereby the Secretary of the Department of Industries and Technology, Government of Bihar, Patna was directed to take a decision on the question of their absorption within a period of two months from the date of production / communication of a copy of the order, passed in the aforesaid C.W.J.C. No. 9550 1998. It was further directed that while considering the case of the petitioners, the Secretary of the Department, in question, will take in account the government's decisions dated 24th and 27th of May, 1984, following which the petitioners were sent on deputation. The Secretary was also directed to take in account the observations made in the judgement and order dated 12.09.1997 passed in the case of Amarnath Singh (C.W.J.C. No. 3513 of 1994). It was, thus, directed that in the light of the aforesaid direction, necessary orders shall be passed by the Secretary in speaking manner.

In order to appreciate the contention of the petitioners, it would be necessary to recount certain facts.



The petitioners were originally the employees of Bihar Agro Industries Development Corporation (hereinafter referred to as "the Corporation" for short). They were deputed for three years in the Department of Science and Technology. Consequent upon their deputation, the petitioner no. 1 was sent to the post of Head of the Department (Mechanical) in State Polytechnic, Adityapur, Jamshedpur (presently in the State of Jharkhand) and petitioner no. 2 was posted as Lecturer (Mechanical) at State Polytechnic, Gaya.

After completion of the deputation period of three years, they were given an extension of one year, i.e. till 31.12.1998 with the condition that such extension shall be operational till 31.12.1998 or till their regular appointment, whichever was earlier.

The aforesaid extension of deputation did not stipulate about any undertaking of the department for their absorption in the services of the department.

It may be noted here that there was a further extension notification vide Memo No. 3327, dated 22.11.1999, but that was only with respect to 14 other officers and not the



petitioners. Because the notification for further extension did not contain the names of the petitioners, they superannuated on 31.01.1999, i.e., before the issuance of the order dated 22.11.1999, referred-to-above.

The petitioners thereafter preferred C.W.J.C. No. 9550 of 1998. A Bench of this Court took into account that one employee, namely Amarnath Singh, who was also similarly sent on deputation to the Transport Department was recalled to his parent department. But the action of the government in recalling his services was revoked by the order of this Court, passed in C.W.J.C. No. 3513 of 1994, holding that it was not open for the government to revoke or recall the earlier order of the deputation.

Considering the cases of the petitioners to be on the better footing than that of the case of the aforesaid Amarnath Singh, who was charged with some misconduct, an order was passed to issue notification, extending the period of the petitioners' deputation at their respective places of work till the date of their superannuation and to pay them their salary and other emoluments etc. accordingly. The question of



payment of retiral dues to the petitioners was left open, as it would have depended upon the question of their absorption in the service of the State Government.

It was in this context that a direction was given to the Secretary, Department of Industries and Technology, Government of Bihar, Patna to take a decision on the question of their absorption after taking into account the government decision dated 24th and 27th of May, 1984, prior to their being sent on deputation.

It appears that pursuant to the orders passed in C.W.J.C. No. 9550 of 1998, referred-to-above, the case of the petitioners was considered by the Secretary of the Department, but the claim was negated by the order dated 11.03.2000, contained in Memo No. 370, which has been impugned in the present writ petition.

In the meantime, the petitioner no. 2, who had worked as government servant from 03.12.1962 to 03.10.1975, i.e. for about 13 years and further from December, 1994 to December, 1998, was paid his retiral dues, taking into account his previous service and services rendered



under deputation, as was directed by a Bench of this Court in C.W.J.C. No. 150 of 2006 and against which the appeal vide L.P.A. No. 1038 of 2009 was dismissed.

It is the contention of the State that now with the grievance of the petitioner no. 2 having been redressed totally, no cause of action remains so far as he is concerned. Under such circumstances, it has been prayed on behalf of the State that his case be rejected.

Regard being had to the fact that pursuant to the order passed by this Court in C.W.J.C. No. 150 of 2006 preferred by petitioner no. 2, he has been given the retiral benefits after taking into account the period of his deputation, no case now remains to be adjudicated as far as petitioner no. 2 is concerned.

As such, the writ petition with regard to the petitioner no. 2 is dismissed.

Since petitioner no. 1 superannuated on 31.01.1999, after obtaining the age of 58 years from the Corporation, he is pursuing his claim for his absorption.



It may be noted here that the issue absorption in government service of some other deputationists was considered by this Court in L.P.A. No. 608 of 2006 and other analogous cases, wherein by order dated 19.04.2010, it was held and directed that respondent-authorities may not treat the deputation of those deputationists as a simple deputation, but one under a valid policy for the purpose of rehabilitation or absorption through the device of transfer of service and to take follow up action.

Considering the aforesaid judgement delivered in L.P.A. No. 608 of 2006 (contained in Annexure – F to the supplementary counter affidavit), the case of the petitioner no. 1 became alive for consideration for absorption in government service. When the order passed in L.P.A. No. 608 of 2006 was not implemented with respect to some deputationists, a contempt petition was filed vide M.J.C. No. 1472 of 2011, in which it was clarified that the deputationists would be treated for the purposes of absorption in government service from the date of the order passed in L.P.A. No. 608 of 2006.



As has been seen in the earlier part of the order, the L.P.A. No. 608 of 2006 was decided on 19.04.2010, by which time the petitioner no. 1 had already crossed the age of 62 years. Therefore, his case for absorption in government service did not fall in the category of cases, which was covered by L.P.A. No. 608 of 2006 and M.J.C. No. 1472 of 2011.

Thus, it is difficult to sustain the claim of the petitioner no. 1 for his absorption in government service.

Learned counsel for the State has also drawn the attention of this Court to the fact that the State of Jharkhand had preferred SLP (C) No. 5522 of 2012 against the judgement passed in L.P.A. No. 608 of 2006, which was allowed by the order dated 03.02.2015 and the order dated 19.04.2010, passed in L.P.A. No. 608 of 2006 so far as it related to one of the deputationists, namely, Avinash Vatsyayan, was set aside. It was also pointed out to this Court that the said Avinash Vatsyayan was deputed at Ranch (Jharkhand) along with the petitioner no. 1. Thus, the case of the petitioner no. 1 stands on a completely different footing than that of petitioner no. 2.



Under such circumstances, no order was passed for absorbing the petitioner in government service.

No case has been made out for the petitioner no. 1 for any direction for his absorption in government service and treating the period rendered by him under deputation for pensionary benefits.

Finding no merit in this petition, the same is dismissed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	04.12.2018
Transmission Date	

