

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9492 of 2015

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Bijay Bhushan Singh Son of Late Brahmadeo Prasad Singh resident of Mohalla -
Katharibag, Chota Telpa, P.S. Town Chhapra, Distt. - Chapra

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Health Govt. of Bihar, Patna
2. The Director - in - Chief, Health Services, Govt. of Bihar, Patna
3. The Regional Deputy Director Health Services, Saran Division at Chapra, Distt.
Chapra
4. The Chief Medical Officer Cum - CMO, Saran at Chhapra

.... Respondents

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Appearance :

For the Petitioner : Mr. Suresh Pd Singh No.1, Advocate and
Kumari Rashmi, Advocate

For the Respondents : Mr. Vasant Vikas, AC to GP 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-05-2018

Heard counsel for the petitioner and the State.

2. Reversion of the petitioner dated 22.10.2007 from the post of clerk to the original post of Computer was held to be illegal under order dated 25.8.2010, passed on petitioner's writ petition bearing C.W.J.C.No. 1827/2008 heard along with C.W.J.C.No. 104/2008. As a result thereof the petitioners were reinstated as clerks. The order came to be passed in their favour after the petitioner superannuated from service on 31.7.2010, respondents have paid all the dues of the petitioner including pension and other dues.

3. The only issue which remains for consideration as is evident from the order dated 11.4.2002, passed in MJC No.



4965/2010 is whether from 14.11.2007 till the date of his retirement the petitioner would be entitled to payment of salary in view of stand taken by the State Government that he was absent and had not performed his duties.

4. Learned counsel for the petitioner submits that pursuant to the order passed in C.W.J.C.No. 1827/2008 in favour of the petitioner he has also been granted the benefits of the Assured Career Progression (ACP). Referring to the averment made in paragraphs 9 and 14 of the writ petition it is submitted that no show cause or any proceeding had ever been initiated against the petitioner alleging absence from service. Petitioner's submission based on pleadings in paragraph 9 of the writ petition is that once the order of his reversion was quashed, it was supposed that the petitioner was all along on duty. It is his submission that similarly situated persons whose cases were decided in C.W.J.C.No. 429 of 2011 under order dated 18.9.2012 have been allowed the benefits of salary for the period from the date of their reversion till the date of their superannuation.

5. Specific stand of the State Government in the counter affidavit is that no salary whatsoever has been paid to the petitioner from 14.11.2007 to 31.7.2010. Even in the proceedings on the petitioner's earlier writ petition arising of C.W.J.C.No. 104 of 2008



this issue was not raised, it is only after disposal of the same the issue of salary has come up. Petitioner's submission is that since he has submitted his joining on 29.10.2007 pursuant to the stay dated 28.7.2007 and since no proceeding has ever been initiated against the petitioner the petitioner would be entitled to salary for the said period.

6. The said submission cannot be accepted as there can be no presumption that the petitioner has been working in the office merely because he had given joining on 29.10.2007. Specific stand of the State Government is that after the order of reversion the petitioner has been absconding from the office for the period 14.11.2007 to 31.7.2012, i.e., date of his superannuation. Petitioner's contention that since no proceeding has been conducted against him, it is supposed that he was all along on the duty, cannot be sustained in absence of any material whatsoever to show that he actually discharged the duty.

7. This Court would also consider the submission of the petitioner with respect to the petitioners of CWJC No. 5298 of 2011. Bare perusal of the order shows that in case of said petitioners pursuant to reversion lesser salary had been paid for the period in question and therefore a claim in respect of difference in salary had arisen due to setting aside of the reversion. This Court



had specifically directed that the entitlement to difference of salary was automatic. In this case, the petitioner was not paid any salary for the period he remained absent, i.e., between 14.11.22007 till his retirement on 31.07.2012. The petitioner’s case cannot be said to be at par with the writ petitioner of CWJC No. 5298 of 2011. Considering the aforesaid submissions, petitioner’s claim for salary for the period during which he has been found to be absent from the office is not sustainable.

8. Learned counsel for the petitioner submits that he will pursue the authorities with reference to material to show that he had actually worked in the said period up till date of superannuation.

9. Liberty is granted to the petitioner to place relevant facts before the authorities for persuading them to make available the benefit of salary for the period from the date of reversal till the date of superannuation.

10. The writ petition is dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.18
Transmission Date	NA

