

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15710 of 2012

Lakshmi Singh Wife of Late (Dr.) Baban Prasad Singh resident of Mohalla-Bank Colony Near Shakuntala Market, P.S. Shastri Nagar, Town & District-Patna Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna
3. Director In Chief, Health Services, Government of Bihar, New Secretariat, Patna
4. Addl. Secretary Department of Health, Government of Bihar, New Secretariat, Patna
5. Regional Deputy Director, Health Services, Saran Division, Saran at Chapra
6. Civil Surgeon-Cum-Chief Medical Officer, Sadar Hospital Siwan
7. Accountant General, Bihar, Birchand Patel Path, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Prasad Choudhary, Adv.
For the Respondent/s : Mr. Anil Kumar, Adv.
For the Accountant General: Mr. Jitendra Kumar Roy, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 12-12-2018

The writ petitioner on behalf of her deceased husband prays for quashing of the order bearing No. 2/Court-01/2009-137(2) dated 14.02.2012 passed by the Principal Secretary, Department of Health, Government of Bihar, the respondent No. 2 whereby the period from 23.10.1997 to 08.12.2000 has been treated extraordinary leave and from 09.12.2000 to 17.12.2000 has been treated as leave without pay thus, reiterating the position intimated through letter dated 30.12.2002 of the Under Secretary. The orders dated 14.02.2012 and 30.12.2002 are impugned at Annexure- 1 and 2 to the writ the petition.



The petitioner also prays for quashing of the order bearing Memo No. 1401 (2) dated 03.07.2003 (incorrectly mentioned as 03.07.2008 in the writ petition) whereby the husband of the petitioner has been granted unutilized leave encashment only for 101 days instead of 240 days impugned at Annexure-3 to the writ petition.

Mr. Rajesh Prasad Chaudhary, learned counsel has appeared for the petitioner while the State is represented by Mr. Anil Kumar, AC to SC- 8. The Accountant General is represented by Mr. Jitendra Kumar Roy.

Facts of the case as noted from the pleadings in the writ petition would reflect that the husband of the petitioner was holding the post of Medical Officer, Sadar Hospital, Siwan. While posted as such, the mother of the Government employee fell sick and thus he prayed for leave from 30.07.1996 to 01.08.1996. Since the condition of the mother of the deceased employee did not improve, he prayed for the extension of the leave from 02.08.1996 to 06.08.1996 and again for extension from 07.08.1996 to 04.09.1996. The situation did not improve and thus a prayer was made for further extension from 05.09.1996 to 31.10.1996. According to the petitioner, since the condition of the mother improved in the meanwhile that her husband gave his joining on 23.10.1997. A copy of the joining is enclosed at Annexure-7.



According to the petitioner, ever since her husband gave joining on 23.10.1997, despite request made for allotment of duty, no response was forthcoming from the Department.

The fact that the joining of the husband of the petitioner on 23.10.1997 was not being accepted, is confirmed from the letter bearing Memo No. 1314 dated 10.04.2000 (Annexure 10) of the Civil Surgeon- cum- Chief Medical Officer, Siwan addressed to the Additional Secretary, Health Department wherein he has sought guidelines whether or not to accept his joining. This letter was followed by another letter dated 11.12.2000 of the Civil Surgeon- cum- Chief Medical Officer, Singhbhum, Chaibasa whereby the Additional Secretary was informed that the husband of the petitioner had been transferred to the District Eye Mobile Unit, Chaibasa vide notification dated 23.07.1996 but at that time he has not given his joining. By the said letter the Civil Surgeon- cum- Chief Medical Officer, Chaibasa has also informed that the husband of the petitioner gave his joining on 09.12.2000 but since there was no post vacant in the District Eye Mobile Unit at Chaibasa, his services are being returned to the Health Directorate, Bihar.

It is pleaded by the petitioner that her husband gave his joining on 18.12.2000 at the Health Directorate and kept waiting for his posting but it never came despite repeated representations



made. It is further her case that awaiting posting that her husband died in harness on 24.06.2000. In between, the deceased employee approached this Court in C.W.J.C. No. 10629 of 2000 which was taken up for consideration after his death on 02.04.2009. A coordinate bench of this Court taking note of the pending grievance of the deceased employee as espoused by his widow who had been substituted in his place, disposed of the writ petition with direction to the respondents to consider the claims afresh and for its disposal within 4 months of receipt/ production of a copy of this order which is enclosed at Annexure-15 and 15(1) to the writ petition.

Since the order was not being complied that the present petitioner moved in contempt giving rise to M.J.C. No. 3375 of 2011. Even while C.W.J.C. No. 10629 of 2000 was pending that the present petitioner filed another writ petition bearing C.W.J.C. No. 12826 of 2001 praying for payment of retiral benefit as well as arrears of pay admissible to her late husband which writ petition was disposed of vide order passed on 05.12.2001 with direction to the respondent to sanction the death cum retiral benefits within 6 weeks of passing of the order.

This Court notices that even when an order to such effect has already been passed in C.W.J.C. No. 12826 of 2001 on 05.12.2001 at Annexure-05 rendering the earlier writ petition



bearing C.W.J.C. No. 10629 of 2000 academic yet it was pursued and disposed of with similar directions on 2.4.2009. The reason can be found in the order passed on the contempt application which was filed by the present petitioner alleging non compliance of the order passed C.W.J.C.No.12826 of 2001 bearing M.J.C. No.520 of 2002. This contempt application was dismissed for non prosecution on 16.04.2004 vide Annexure-6. Perhaps, it is for this reason that the earlier writ petition bearing C.W.J.C. No.10629 of 2000 was pursued which got disposed of on similar terms as the subsequent writ petition on 2.4.2009 and it is taking shelter thereunder that a second contempt application was filed bearing M.J.C. No.3375 of 2011 which got disposed of because in the meanwhile the respondents had already considered the grievance and rejected the same by the order impugned dated 14.2.2012 at Annexure-1. It is questioning the order rejecting the claim dated 14.02.2012 that the writ petition is filed.

Mr. Rajesh Prasad Chaudhary, has appeared for the petitioner and reiterating the sequence of events as already noted above, he refers to the supplementary affidavit filed on behalf of the petitioner on 20.9.2018 and in reference to a letter dated 24.11.1997 at Annexure- 17 he submits that guidelines had been sought by the Civil Surgeon- cum- Chief Medical officer, Siwan from the Government Pleader whether or not to accept the joining



of the petitioner. He next refers to Annexures-18 and 18/1 to submit that the pay slip dated 11.01.2000 would confirm that the petitioner was treated posted at Sadar Hospital, Siwan. He next turns to Annexure- 10 to the writ petition to argue that guidelines was being sought on the joining as late as on 11.04.2000 by the Civil Surgeon cum Chief Medical Officer, Siwan from the Health Department. It is stated that it is only on 04.12.2000 that his joining was rejected by the Department and communicated to him by the Civil Surgeon- cum- Chief Medical Officer through Memo No.1431 dated 04.12.2000 Annexure- 10/1 which letter also gave information on his transfer to the District Eye Mobile Unit at Chaibasa requiring him to give his joining there. Learned counsel next refers to Annexure-11 which is a letter dated 11.12.2000 of the Civil Surgeon-cum-Chief Medical Officer, Chaibasa, West Singhbhum to submit that no sooner after the issuance of the transfer order dated 04.12.2000 that the petitioner gave his joining on 09.12.2000 at Chaibasa but the same was not accepted because there was no vacant post and the services of the petitioner was returned to the Health Directorate, Bihar. Mr. Chaudhary in reference to these letters submits that there was no laches on the part of the husband of the petitioner to discharge duties rather it was the laches on the part of the department in not giving appropriate posting that awaiting such posting, the period



23.10.1997 to 08.12.2000 went past and thus, since there was no laches on the part of the deceased employee to discharge duties, the salary cannot be denied to him by treating the period as extraordinary leave. He submits that Annexure-18 series itself confirms that the husband of the petitioner was posted at Siwan until that date and in which view of the matter, the rejection of salary for the period is unsustainable.

The argument of Mr. Chaudhary is contested by Mr. Anil Kumar, learned State Counsel who submits that the husband of the petitioner was already relieved from 21.08.1996 as manifest from Annexure-10. Though learned counsel admits that the relieving order was ex-parte but he counters by submitting that having been relieved of his post, the husband of the petitioner cannot claim salary for his posting at Siwan. With reference to the supplementary counter affidavit filed on 26.09.2018 he admits that since it is old matter, the relieving order of the husband of the petitioner from Siwan, is not available.

Having heard learned counsel for the parties and having perused the records, I would be fair enough to accept that initially when this matter was heard on 14.09.2018 I was not persuaded for grant of indulgence to the prayer made, however during the course of argument Mr. Chaudhary has made reference to some documents and communications which confirms that it is not the



husband of the petitioner who was found wanting at discharge rather it is the Department which was thoroughly confused in not utilizing the services of the deceased Government servant since after his joining on 23.10.1997.

I have already discussed the sequence of the events as reflected from the arguments of Mr. Chaudhary but for the sake of ready reference, I am again persuaded to refer to the relevant enclosures to the proceedings. The fact that the husband of the petitioner went to attend to his mother is not in dispute. It is also not in dispute that he gave his joining on 23.10.1997. This fact is confirmed from Annexure-10 which is the letter dated 10.04.2000 of the Civil Surgeon-cum-Chief Medical Officer addressed to the Additional Secretary, Health Department, Government of Bihar. In the letter under reference, the Civil Surgeon also mentions that an ex-parte relieving order was issued on 21.08.1996 i.e. during the leave period. Now taking note of the notification dated 24.04.1996 (Annexure-8) of the Health Department relied upon by the petitioner for giving his joining on 23.10.1997 before the Civil Surgeon- cum- Chief Medical Officer, Siwan coupled with the fact that the joining of the petitioner had in fact been accepted at Siwan which is confirmed from the pay slip enclosed at Annexures-18 and 18/1 dated 08.10.1999 and 11.01.2000 for the period 01.01.1997 until 01.01.1999 and 01.02.1999 to 01.01.2000, in my



opinion, these circumstances confirms that the deceased employee continued at Siwan and the ex parte relieving order was not made effective.

The second document which negates the position is the order bearing Memo No. 1431 dated 04.12.2000 (Annexure- 10/1) which is a letter of the Civil Surgeon- cum- Chief Medical Officer, Siwan informing the husband of the petitioner regarding the rejection of his joining as well directs him to give joining at the District Eye Mobile Unit, Chaibasa. Annexure-11 is the letter dated 11.12.2000 of the Chief Medical Officer, Chaibasa, West Singhbhum accepting that the petitioner gave his joining on 09.12.2000 but since there was no vacant post available at West Singhbhum, Chaibasa that the husband of the petitioner was directed to give his joining in Health Department, Patna. In fact the joining of by the deceased employee at Chaibasa is also accepted in the impugned order dated 14.02.2012 passed by the Principal Secretary, Health Department at Annexure 1.

In the circumstances discussed above where the joining of the husband of the petitioner was accepted on 23.10.1997 and it is also accepted that following the directions present in the order dated 04.12.2000 at Annexure- 10/1 he gave his joining at Chaibasa on 09.12.2000 vide Annexure-11 and considering the salary slip for the period 01.01.1997 to 01.01.2000 issued at



Siwan, I completely fail to appreciate how this period that is 23.10.1997 to 08.12.2000 is being treated as extraordinary leave, when there lay no fault in the deceased employee in discharge of official duties.

The facts discussed above confirms that petitioner continued at Siwan during the period in dispute and has also been allowed salary for a part thereof. In such undisputed circumstances so noted, neither the period in question can be treated extraordinary leave nor can effect his entitlement to unutilize leave. While observing such I would simply borrow the expression found in the judgment of the Bombay High Court in a case reported in **AIR 1954 Bombay 232 (All India Groundnut Syndicate Ltd. versus Commissioner of Income Tax, Bombay City)** wherein their Lordships of the Bombay High Court have held that the Department cannot encash on its own folly:

“
It is an elementary principle of law that no person-we take it that the Income-tax Department is included in that definition-can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.....”

For the reasons discussed above, the order passed by the Principal Secretary bearing Memo No. 137(2) dated 14.02.2012 to the extent it treats the period 23.10.1997 to 08.12.2000 as



extraordinary leave and 09.12.2000 to 17.12.2000 as leave, cannot be upheld and consequently for the same reason the decision relating to unutilized leave as present in the order dated 03.07.2003 at Annexure-3 cannot be upheld and are accordingly set aside. The matter is remitted to the Principal Secretary, Health Department to consider the claim afresh and dispose of the same in accordance with law within a period of 3 months from the date of receipt/ production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.12.2018
Transmission Date	NA

