

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3054 of 2009

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Md. Jan Ansari, Son of Isha Md. Ansari, Resident of Village and post- Bhapta, Via-
Narkatiaganj, District- Chaparan.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Industries Department, Bihar, Patna.
2. Director, Industries Department, Government of Bihar, Patna.
3. Director, Handloom and Handicraft Corporation, New Secretariat, Patna.
4. Managing Director, Handloom and Handicraft Corporation, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Bihar, Bir Chand Patel Path, Patna.
6. District Provident Fund Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Jha, Mr. Sanjeev Kumar and Mr. Aman Raja, Advocates
For the State	:	Mr. Arvind Ujjwal, S.C. 4 Mr. Upendra Pratap Singh, A.C. to S.C. 4

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-05-2018

It appears that in the order dated 20.04.2018, along with the present case, five other cases have been shown to be analogous as per the ordersheet of the said date. However, it is factually incorrect for the reason that except for the present case, the remaining five cases stood disposed off on 20.04.2018 itself by a separate common order.



2. In view thereof, the order recorded in the present case dated 20.04.2018 stands modified to the extent that the order stands restricted to C.W.J.C. No. 3054 of 2009 and reference of the other five analogous cases stands expunged.

3. Heard learned counsel for the petitioner and State.

4. The petitioner has moved the Court for the following reliefs:

“ That this is an application for issuance of a writ in the nature of mandamus or any other appropriate writ/ order or direction commanding the respondents to make payment of petitioner’s pensionary benefits which became due to him after his superannuating from the service from “Dyeing Center”, Guljarbag, Patna under the respondent Corporation as Laboratory Assistant on 31.5.1999 on the following counts:-

- (i) Fixation of pension w.e.f. 1.6.1999 and payment thereof along with arrears,*
- (ii) Gratuity Amount,*
- (iii) Leave Encashment,*
- (iv) General Provident Fund amount,*
- (v) Other admitted dues, if any.”*

5. The petitioner was temporarily appointed as Store Keeper in the Department of Industries on 11.05.1959. Upon creation of the Handloom and Handicraft Corporation (hereinafter referred to as the ‘Corporation’), on 13.08.1975, services of various persons, including the petitioner was transferred to the newly created Corporation with effect from 22.09.1975 from where he superannuated on 11.06.1999. The claim of pensionary benefit by the



petitioner is resisted by the authorities on the ground that having moved to the Corporation while still being in temporary service, his service was required to be terminated by the Corporation and just because the same has not been done would not create a right to pensionary benefit by him. However, by order dated 20.01.2000, the service of the petitioner was confirmed from the date of his joining and for the entire period. The writ petition having been filed after service of copy on learned counsel for the State on 2nd March, 2009, during the pendency of the writ petition, by order dated 05.05.2011 such confirmation dated 20.01.2000 was revoked.

6. Learned counsel for the petitioner submitted that the facts being undisputed, the only question remains as to whether, in law, the petitioner can be denied such benefit, moreso, for the reason that in the case of identically situated persons, the Hon'ble Supreme Court in Civil Appeal No. 2594 of 2005 and analogous cases, has granted such relief. It was further submitted that in the said case also the confirmation given to the employee was after his superannuation, as is the case in the present writ petition.

7. On a specific query of the Court to learned counsel for the State as to whether the petitioner was similarly situated to the persons before the Hon'ble Supreme Court, he admitted that the petitioner is similarly situated. However, he submitted that there is a



slight distinction inasmuch as, at the relevant time, before the Hon'ble Supreme Court, the confirmation of their services by the State Government had not been revoked whereas in the case of the petitioner, the same has been done by a formal order on 05.05.2011, after giving notice to him.

8. Again, on a specific query of the Court as to whether in terms of such notice dated 27.04.2011, what steps the authorities took to ensure either service of the notice or of giving the petitioner a reasonable opportunity to show cause, learned counsel for the State had no answer.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner has been able to make out a case for interference. Once the learned State counsel does not dispute that on facts, the petitioner is similarly situated to the persons before the Hon'ble Supreme Court, the only confusion which is required to be cleared is what would be the position when in the present case, the authorities have passed an order revoking the confirmation of service of the petitioner. The matter does not require any elaborate discussion or interpretation. The persons before the Hon'ble Supreme Court were also similarly situated on this account i.e., their service was also confirmed after their superannuation. In the present



case also, even if the Court takes into consideration the so called show cause notice issued to the petitioner dated 27.04.2011, the only ground taken in the said show cause is that since the order of confirmation was passed after his superannuation, there did not appear to be any justification for the same. The Court would pause here. Such type of show cause is quite surprising as nothing has been mentioned with regard to the merits or the reasons why the confirmation made was fit to be revoked. Moreover, it also does not disclose or explain as to how the basis for the authorities to pass the order of confirmation dated 20.01.2000, was bad. Thus, when for no other reason, except that the order of confirmation was post retirement and, this also being the fact before the Hon'ble Supreme Court in the case of the persons who had moved there, the Court has no hesitation to hold that such passing of an order of revocation dated 05.05.2011, only on such ground cannot be held to be either valid or would come in the way of the petitioner being granted the same relief as has been granted to similarly situated persons by the Hon'ble Supreme Court. The Court is also tempted to comment on the so called show cause dated 27.04.2011. It is quite interesting to note that the letter itself is dated 27.04.2011 and the date on which the petitioner was asked to appear along with his show cause is 03.05.2011, there being only five days intervening. The said letter,



even if it was sent by registered post, could not have reached the petitioner in West Champaran before at least three working days. Thereafter, expecting the petitioner not only to appear before the authorities but also come with his prepared show cause, is totally unreasonable and arbitrary and would not stand the test of the mandatory requirement of law of giving the person a reasonable opportunity to meet the charges against him. However, the Court would not dwell any further on this point, for, basically, it is relying upon the decision of the Hon'ble Supreme Court, when the facts as well as the circumstances are identical without any distinction. Moreover, the Hon'ble Supreme Court had noticed that the confirmation of the service of the appellants therein was not revoked by the Government, as an additional point in his favour. Further, the present petitioner had already moved this Court in the year 2009, basing his claim on the order of the Hon'ble Supreme Court, whereas the order of revocation of confirmation came to be passed in May, 2015, during the pendency of the writ petition, and thus, would be covered by the principle of *lis pendense*.

10. For the reasons aforesaid, the writ petition stands allowed. The authorities are directed to pay the pension and other benefits which are due to the petitioner, in accordance with law, treating the period of service right from his initial date of joining on



the post within a period of three months from the date of production
of a copy of this order before the respondent no. 2.

(Ahsanuddin Amanullah, J.)

P. Kumar/SK Singh

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