

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 21374 of 2011

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Swetamber Nath Dubey, Son of Late Baidya Nath Dubey, Resident of Village - Pawani, P.S. Muffasil (Buxar) District Buxar at Present Retired Accounts Clerk, Irrigation Mechanical Division, Dihri, District – Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Accountant General, Bihar, Veerchand Patel Path, Patna.
3. The Principal Secretary, Water Resource Department, Irrigation Building, Patna.
4. The Under Secretary, Water Resource Department, Irrigation Building, Patna.
5. The Chief Engineer, Water Resource Department, Dehri, Rohtash.
6. The Superintending Engineer, Irrigation Mechanical Circle, Gaya.
7. The Executive Engineer, Irrigation Mechanical Division, Dihri, Rohtash.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bishnu Kant Dubey, Mr. Panchu Ram and Mr. Sanjeev Kumar, Advocates
For the Accountant General	:	Mr. L. P. Rajgarihar, Advocate
For the State	:	Mr. Kumar Kamal Nayan, A.C. to S.C. 28

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-03-2018

Heard learned counsel for the petitioner; State and
Accountant General.

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

“1. That this is an application for issuance of a writ in the nature of certiorari to quash the letter bearing no. 418 dated 06.04.2011 of the Executive Engineer by which an attempt has been made to not make payment of post retrial benefits and arrears of salary of the petitioner and for issuance of a consequential writ in the nature of mandamus directing and commanding the respondents to make payment of post retrial benefits i.e. pension, gratuity, group provident fund, L.I.C.,



leave encashment salary etc. as also salary of the period 1998 to 31.01.2011 (the date of superannuation) and/or for issuance of a writ/order/direction for which the petitioner may be found legally entitled to under the facts and circumstances stated herein under.”

3. The petitioner was appointed as work charge chowkidar on 15.03.1973 and along with others was adjusted on the permanent post of Accounts Clerk by order dated 12.10.1981. However, the authorities having realized the illegality of such adjustment, by order dated 12.02.1998, he was reverted to his original Class-IV post in the Work Charge Establishment on the ground that the Work Charge Employee cannot be adjusted on a regular Grade-III post. The petitioner moved in C.W.J.C. No. 1936 of 1998, which was remanded to the authorities for fresh consideration. However, as in the case of some similarly situated employees, the authorities had withdrawn the order of reversion, the petitioner again moved this Court in C.W.J.C. No. 10366 of 2003, in which, by order dated 14.09.2004 the authorities were directed to dispose off the pending representation of the petitioner within three months. The petitioner seems to have filed a representation in terms of the order of the Court on 24.09.2004, but the decision of the authorities on the same came on 12.01.2010. After that the petitioner claims to have submitted his joining on 27.01.2010, whereas the



authorities disputed the said fact and took the ground that he has sent his joining through post which was received on 11.02.2010. The petitioner was then issued a show cause as to why he should not be dismissed from service to which he submitted his reply, but in the meantime, he also attained the age of superannuation on 31.01.2011. The authorities have paid him retiral dues only till the time he was in actual service i.e., 30.07.1998.

4. Learned counsel for the petitioner submitted that the fact that he has personally appeared before the authorities and submitted his joining on 27.01.2010 has wrongly been controverted as the then Executive Engineer was biased against the petitioner for extraneous reasons and did not accept the joining and later on had created a bogey that the same was received through post on 11.02.2010. It was submitted that the petitioner was asked show cause as to why his services be not terminated and after giving his reply, he attained the age of superannuation and, thus, no order of any dismissal having been passed against him, he is entitled to full pensionary benefits till the actual date of his superannuation. It was submitted that the authorities may be justified in not granting salary etc. for the period the petitioner was away from duty but for the purpose of counting the length of his pensionable service, the entire period has to be taken into account. Learned counsel submitted that



one Ram Govind Singh, who was similarly situated to the petitioner and was also co-petitioner in the writ petition earlier filed by the petitioner, has been granted retiral dues treating his length of service to be till the date of his actual superannuation pursuant to the order of the Chief Engineer whereas in the case of the petitioner, the same relief is being denied to him arbitrarily.

5. Learned counsel for the State submitted that the authorities have accepted the period of service of the petitioner till 31.07.1998 i.e., the date till which he has actually worked and thereafter, as he has absented himself from duty, the period after that till 31.01.2011 has not been counted. It was submitted that the petitioner never physically came to give his joining even pursuant to the order of the authority dated 12.01.2010.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not persuaded to interfere in the matter. The undenied and unrebutted fact is that from 31.07.1998, the petitioner had absented himself from work without there being any justification. The mere fact that he has been agitating the matter before the Court or the authorities would not entitle him not to work, may be on the post to which he was reverted, and depending on the outcome of the litigation, the period would have been dealt with, but him not



presenting himself before the authorities or performing the duty of the post, which at the relevant time, he was legally bound to do and that too for almost eleven and a half years, cannot be justified. On a direct query to learned counsel for the petitioner as to why he had not joined, the only answer is that he was busy in pursuing the litigation and had kept approaching the authorities. Even from the materials on record, the Court in the earlier round of litigation by order dated 14.09.2004 had directed the pending representation of the petitioner to be considered within two months by the authorities and pursuant to the same, the petitioner represented before them on 24.09.2004 and finally the order on the same came on 12.01.2010 i.e., after almost five and a half years and during which also, there is no explanation as to why the petitioner kept quiet and did not agitate, as the direction of the Court was to pass orders within two months. That is one aspect of the matter. The other aspect of the matter is that the petitioner could not have decided on his own volition not to attend his duty till the time he got relief either from the Court or the authorities. It was not within the capacity of the petitioner to anticipate as to what order would be passed by the Court or the authorities and, thus, it was incumbent upon him to implement and accept the order which was existing on that day. He was, thus, required to join at his place on the reverted post and to discharge his



duty which in no way came between his efforts to assail the order either before the Court or the authorities themselves. This is more relevant in the background that if it was not in the hands of the petitioner as to what order is finally be passed in his writ petition, in the event the same stood dismissed, the petitioner very well knew that he will be left in the lurch as he had not discharged his duty as an employee by accepting the order of the employer which at the relevant time was not interfered with either by the Court or the superior authorities. This clearly reflects grave impropriety and even misconduct on the part of the petitioner. Just because of a mere hyper technicality, if the authorities did not dismiss the petitioner from service, would not mean that even on the basis of the admitted position, the grave misconduct committed by the petitioner shall stand waived. This would also fall in the category of wilful abandonment by the petitioner. Moreover, it is well settled principle for interference by the High Court under its prerogative, extraordinary writ jurisdiction under Article 226 of the Constitution of India that the person who approaches the Court should come with clean hands. In the present case, as has been discussed earlier in the order, the conduct of the petitioner in willfully abstaining from duty for close to eleven and a half years could in no way be said to be a proper act and, thus, the Court would also decline to interfere in the



matter purely on such hyper technicality. The matter relating to post retiral/pensionary benefits has to be seen in the perspective of an employee who has discharged his duty while in service satisfactorily. Pension being granted for satisfactory service obviously connotes that the person to whom it is given should have discharged his duty to his employer loyally and faithfully and with proper discipline. In the present case, where the conduct is totally unacceptable, as the petitioner has defied a valid order for almost eleven and half years, without any reason or justification, it cannot be said that his service has been satisfactory. Thus, taking the overall view in the matter, the Court is not inclined to interfere in the matter.

7. However, coming to the matter of discrimination, if what has been submitted by the petitioner is true, i.e., Ram Govind Singh being identically situated to the petitioner, has been granted the relief the petitioner seeks, the authorities are required to consider the matter and should not take a different stand with regard to the same set of facts. If on facts, the case of Ram Govind Singh is similar to that of the petitioner, the treatment meted out to the two should also be the same, otherwise it would reflect arbitrariness and discrimination which the Constitution of India prohibits.

8. Accordingly, the writ petition stands disposed off with liberty to the petitioner to file a representation before the



respondent no. 3 to consider his case for parity with that of Ram Govind Singh, who is said to be identically situated. If such representation is filed, within four weeks from today, the respondent no. 3 shall look into the matter and take a decision after verifying with regard to the claim of the petitioner of being identically situated to Ram Govind Singh. If it transpires that there is no difference on facts of the petitioner’s case with that of Ram Govind Singh, the Court would expect that the authorities would take a similar view in the case of the petitioner without being subject to the charge of any hostile discrimination.

(Ahsanuddin Amanullah, J.)

P. Kumar

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