

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13220 of 2008

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Yogendra Narain Jha, S/o late Abinandan Jha, Resident of Village Chainpur, P.S. Bargaun, Dist. Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Director, Provident Fund, Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Under Secretary, Water Resources Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Darbhanga.
6. The Executive Engineer, Western Canal Division, Benipatti, Madhubani.
7. The Executive Engineer, Design Division No.-3, Darbhanga presently at Executive Engineer, Canal Division No.-2, Sakri, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.N.Pathak, Adv.

For the Respondent/s : Mr. Sunil Kr. Mandal, SC-3
Mr. Bipin Kumar, AC to SC3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is seeking salary for the period 3.8.1987 to 17.12.1999 and he has also raised a grievance that the period of illness has been treated as extraordinary leave.

The issue can be settled by narrating the limited fact that the petitioner, namely, Yogendra Narain Jha was posted as Accounts Clerk in Design Division No. 3, Darbhanga, the Government has issued a general order of transfer vide order dated 7.5.1994 (Annexure-4), thereby employees were transferred to



different Divisions mentioned against their respective names. In the general order of transfer, the name of Vogendra Jha, Division No. 4 of Darbhanga to Dehri. On that basis, the petitioner was relieved under the impression that it is the petitioner who was transferred to Dehri Division. When he pointed out the mistake that his name is Yogendra Narain Jha and the person who has been transferred is Vogendra Jha of Division No. 4, the Government issued a corrigendum letter dated 2.8.1997 (Annexure-5) whereby the rectification has been made to the extent in place of Vogendra Jha of Design Division No. 4, it will be read as Yogendra Narain Jha, Division No. 3. The petitioner again approached to the authority for relieve from Design Division No. 3 where he was posted but, he was informed by the Chief Engineer vide letter dated 28.1.1998 (Annexure-6) that second relieving order has no meaning when he has already been relieved from his post but, later on, again the Deputy Secretary, Government of Bihar vide letter dated 17.12.1999 has recorded that the petitioner was going to superannuate very soon, the rectification was made in the transfer order, if necessary steps of correction was not made in his transfer letter, he would face unnecessary harassment after his superannuation and, after due consideration, the letter no. 2894 dated 2.8.1997 (Annexure-5) itself was withdrawn, accordingly, the petitioner was directed to join at his original place of posting and, accordingly, on the next date, he



joined there. Further the petitioner has joined three days before his superannuation on the ground of his illness but, at the time of joining, he had not produced any medical certificate, claimed that for the period of his illness, he should be granted medical leave but, as per stand of the State, he has produced the certificate after thirteen months of his retirement, that too, of a homeopathic doctor and, as such, the State has treated the period of his illness as an extraordinary leave. For such action of the respondent regarding extraordinary leave, this Court does not find any wrong in it as at the time of his joining, if he wanted to take the benefit of medical leave, he was to produce the certificate of his illness along with the supporting documents at the time of his joining but, he failed to do so and, as such, he cannot take the benefit in the event of failure, what he was supposed to do as per law. For the period of salary from 3.8.1987 to 17.12.1999, admittedly, there was a mistake in the order of transfer which was later on corrected, later on, the correction letter was withdrawn and he was directed to join at his original place.

This court is of the view that for the act of negligence or error of the State, the petitioner cannot suffer and would be deprived of the salary on the principle of “No Work No Pay”. That principle applies when the employee is at fault. When the employer itself is at fault, it cannot shift the responsibility on the head of the employee. In



the present case, admittedly, the mistake has been committed by the State because in the earlier order of transfer dated 7.5.1994, one Vogendra Jha of Design No. 4 was transferred whereas the petitioner is Yogendra Narain Jha posted at Design Division No. 3. In that view of the matter, this Court directs the State to make payment of salary for the period 3.8.1987 to 17.12.1999 as the petitioner was not at fault, it is the fault of the State and liability cannot be shifted on the head of the petitioner.

This writ application is, accordingly, allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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