

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1548 of 2012

IN

Civil Writ Jurisdiction Case No. 3811 of 2004

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Bidyattama Devi, Wife Of Ramendra Prasad Sinha, Resident Of Opposite 7/28
Kankarbagh Housing Colony, P.O. & P.S. - Kankarbagh, District - Patna

.... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner Cum Secretary, Department Of Health Medical Education
And Family Welfare, New Secretariate Patna
3. Director In Chief, Health Services Bihar, New Secretariat, Patna
4. Superintendent, Nalanda Medical College And Hospital, Patna
5. Deputy Superintendent L.H.V. School Patna City

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. RAJESH KUMAR SINHA

For the Respondent/s : Mr. DEVENDRA KR SINHA AAG2

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-01-2018

Seeking exception to an order passed by the learned Writ
Court on 28.09.2010 in CWJC No. 3811 of 2004 this appeal has been
filed under Clause 10 of the Letters Patent.

Petitioner who was working as a Public Health Nurse in
NMCH, Patna, was transferred to A N M School, Purnea on 2.6.1999.
The order of transfer was modified on 31.12.1999. Even though she
was relieved in the year 1998 she did not join the transferred post but
after modification on 31.12.1999 joined on 10.01.2000 and the
question raised is as to whether salary for the period from 23.06.1998



to 9.1.2000 should be paid to her.

The learned Writ Court has gone into the question and has found that the competent authority has regularized the period of absence by granting earned leave as admissible for 224 days and the remaining period has been treated as extraordinary leave under the Bihar Service Code. The learned Court found that there is no error in doing so as the same has been done in accordance with the requirement of the Rules. The petitioner's entire service shall be counted for pensionary benefits and it shall not affect her post-retiral benefits and the absence shall not be treated as break in service.

Keeping in view the aforesaid order passed by the learned Writ Court in regularizing the period of absence, we see no reason to make any indulgence into the matter.

Even though the learned counsel for the appellant tried to argue by placing reliance on a judgment rendered by a Single Bench of this Court in the case of *Rama Nand Pandit vs. State of Bihar [2004 (3) PLJR 181]* to say that the petitioner was not given a posting or permission for joining salary for the period cannot be denied. In our considered view in that judgment rendered in the case of Rama Nand Pandit (supra) the facts are entirely different. In this case, the petitioner did not join immediately after she was relieved and looking to the totality of the circumstances the period has been regularized



without adversely affecting the post -retiral benefits to the petitioner merely on the principle of *no work no wages* salary for the period has been denied to the petitioner and in doing so no error has been committed which warrants reconsideration.

The appeal stands dismissed.

(Rajendra Menon, CJ)

mr1./-

(Anil Kumar Upadhyay, J)

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