

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8913 of 2008

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1. Kripa Shankar Singh Son of late Suraj Prasad Singh Village & P.O: Mokari, P.S :
Bhabua, District: Kaimur ,Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department,
Sinchai Bhavan, Patna.
2. The Under Secretary, Water Resources Department, Sinchai Bhavan, Patna.
3. The Executive Engineer, Sone High Level Canal Division, Bhabua.
4. Personnel Grievances Fixation Cell, Finance Department, Government of Bihar.
5. The Accountant General, Bihar, Patna.
6. District Provident Officer, Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate

For the Respondent/s : Mr. Chittranjan Sinha, PAAG-2 Sr.
Ms. Ratna Kumari AC to PAAG-2

For the Accountant : Mr. Jitendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-04-2018

Learned counsel for the petitioner is directed to supply
welfare stamp by tomorrow (25.04.2018).

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

3. In the present case, the petitioner has raised a grievance
with respect to the letter issued vide Memo No. 3635 dated
21.05.2002 wherein the period from 21.10.1982 to 28.12.1986
will be adjusted against earned leave, though the period from
01.06.1982 to 20.12.1982 and 19.12.1986 to 31.12.1986 having



been treated as waiting for posting.

4. The petitioner was holding the post of Assistant Engineer, was deputed in the Bihar State Construction Corporation though his parent department was the Irrigation Department. The Bihar State Construction Corporation vide Memo No. 1426 dated 24.05.1982 services of the petitioner was returned to Irrigation Department i.e. parent department, he was relieved from that department on 31.05.1982, accordingly Mr. Singh (petitioner) gave his joining in the Irrigation Department on 1.6.1982 where after the Irrigation Department vide notification no. 2179 dated 12.06.1982 transferred the petitioner to Gandak Design Division No. 3, Siwan, accordingly he gave his joining on 12.06.1982. As in that division the post of Assistant Engineer was not vacant, the Executive Engineer, Design Division No.3 Siwan vide Memo No.222 dated 28.06.1982 returned his service and in compliance of that again he has joined to the Head Office on 29.06.1982. These facts are not in dispute.

5. The disputed area is that the department vide notification no. 4398 dated 20.10.1982 transferred the petitioner to Ranchi. As per department, a notification was published and he was knowing to his place of posting but he did not join, in absence of his joining another person was posted there where after Mr.



Singh (petitioner) filed an application dated 22.8.1985 after three years treating himself to be waiting for posting after due consideration, the department vide Memo No.5740 dated 27.12.1986 placed his services to the office of Chief Engineer, Project and Monitoring Division. As per petitioner, letter no. 4398 dated 20.10.1982 was never served upon him nor he was knowing his place of posting at Ranchi and further submits that even the department has never considered his case of posting at Ranchi. Counsel for the petitioner has asserted that in many occasions, met his higher officers for due posting in support of his submission he has attached some documents showing his visit with the higher officials. Some slips have been attached in Annexures 9 series showing his meeting with higher officials concerning with waiting for posting. He has further pointed out that the letter dated 27.12.1986 by which his services was placed to Chief Engineer, Project and Monitoring Division in column 3 reference has been made waiting for posting.

6. Learned counsel for the State has placed reliance on paragraph 17 of the writ petition wherein it has been mentioned that in pursuance of the notification dated 20.10.1982 the petitioner was relieved by Deputy Secretary, Water Resources Department, Patna but in paragraph nos. 16 and 18 of the writ



petition wherein it has been mentioned that the said notification was never served upon him and further said notification was never published in the official Gazette or any Gazette from the Gulzarbagh Press. This fact has not been denied by the State.

7. The respondent no.3, Executive Engineer has filed his supplementary counter affidavit wherein the State has not denied the statements made in paragraph nos. 16 and 18 of the writ petition. Only plea has taken as he was posted at Head Office must be knowing the notification whereas he has taken a plea that said notification was never served upon him nor the same was published by the Gulzarbagh Press.

8. In order to resolve the dispute this Court had directed the State to bring on record some material evidence showing service of transfer order or relieve order. This Court vide order dated 03.04.2018 directed the State to bring on record material evidence to show that he had admitted that he was relieved by the Deputy Secretary, Water Resources Department. Though counter affidavit has been filed by State but this facts could not bring corroborative evidence by the State that he has ever admitted about serving of said notification whereby the petitioner was transferred to Ranchi nor any material has been brought by the State to show that the said notification was ever published in the Official Gazette or



published by the Gulzarbagh Press.

9. In such situation and supported by Annexure 9 series by which the petitioner has claimed that for his posting he has visited the office of the Chief Engineer from time to time and even the letter Annexure 10) by which he was ultimately transferred itself discloses and corroborates the fact that the department itself treated the petitioner waiting for posting.

10. Having given anxious thought to the present case admittedly when the joining of the petitioner was not accepted by Executive Engineer, Design Division, Siwan he gave his joining in the Head Office. The Head Office by notification vide Memo No. 4398 dated 28.10.1982 was posted at Ranchi but there is no material to reflect and suggest that the petitioner was ever communicated his transfer letter to petitioner. This fact has further been corroborated vide letter no. 5740 dated 27.10.1986 whereby he was placed in the office of Chief Engineer Project and Monitoring Division wherein department has itself recorded that he was waiting for posting.

11. In such circumstances, findings recorded by the Deputy Secretary, Government of Bihar, Irrigation Department treated the petitioner for the period from 21.10.1982 to 28.12.1986 to be absent having been adjusted against his earned leave standing to



his credit is not sustainable and he will be treated to be waiting for posting the period from 21.10.1982 to 28.12.1996 and to that extent this Court interferes with the letter of Irrigation Department and he will treated to be entitled for the salary for aforesaid period and that period will not be adjusted against earned leave.

12. This court has already recorded that the period as aforesaid will be treated for waiting for posting, in consequence the petitioner will be entitled to all benefits including monetary benefits and his pensionary benefit or any enhancement of salary.

13. With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	1.5.2018
Transmission Date	NA

