

THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.102 of 2018

IN

Civil Writ Jurisdiction Case No. 1321 of 2016

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Sri Bimal Chandra Singh Son of Late Ram Chandra Prasad Singh Resident of
Village Baruari, P.O. Kewatsa, P.S. Gaighat, District - Muzaffarpur.

.... Writ Petitioner / Appellant

Versus

1. The State of Bihar.
2. The Agriculture Production Commissioner, Department of Agriculture, Bihar, Patna.
3. The Principal Secretary Department of Finance, Old Secretariat, Patna, Bihar.
4. The Principal Secretary, General Administration Department, Old Secretariat, Patna, Bihar.
5. Deputy Secretary, General Administration Department, Old Secretariat, Patna, Bihar.
6. The Secretary, Department of Agriculture, New Secretariat, Bihar, Patna.

.... Respondents / Respondents.

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Appearance:

For the Appellant/s : Mr. Kumar Kaushik, Advocate.

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018

Challenging the order dated 06.12.2017 passed in CWJC
No. 1321 of 2016 the original writ petition has preferred this intra-
court appeal.

2. The Writ Application was preferred for a mandamus
directing the respondents to restrain from treating the absorption of
the petitioner, who was earlier an employee of the erstwhile Bihar
Agriculture Marketing Board, in government service as a fresh
appointment. A further direction was prayed for to grant continuity of



service in accordance with Section 6 of the Bihar Agriculture Produce Market (Repeal) Act, 2006 (hereinafter referred to as 'the Repeal Act'). The petitioner also prayed for a direction to the respondents to grant all consequential benefits, like, entitlement to hold pension scheme, seniority in cadre and other benefits. He has also prayed for salary for the period 02.09.2008 to 30.11.2011 and, at last, he has prayed for a direction to the respondents to grant the benefits of Assured Career Progression to the petitioner after holding that the petitioner is entitled to his absorption in government service along with the benefit of entire past service rendered in the erstwhile Marketing Board.

3. The learned Writ Court found that in the light of the stipulations present in the Repeal Act as well as the judgments and order passed by this Court efforts were initiated for absorbing the employees of the dissolved 'Marketing Board' and, as a consequence thereof, the petitioner was adjusted against the post of Panchayat Supervisor in the Department of Panchayati Raj. A posting order was issued to that effect on 02.09.2008, the learned Writ Court found that the petitioner suppressed this copy of the posting order because instead of joining the post which primarily came as a largesse and equity based decision of absorbing employees of dissolved organization, the petitioner chose to contest the absorption itself by



filing a Writ Petition being CWJC No. 8012 of 2004. The Writ Petition was filed by the Association of Employees along with the petitioner and another.

4. The learned Writ Court has taken note of the interim order dated 26.09.2008, present at Annexure-2, by which directions were issued to the respondents to accept the joining which was subject to final outcome but the petitioner did not choose to join the post. The said Writ Application was finally heard and judgment was delivered on 27.07.2010 whereunder a direction was issued to absorb the petitioner and others in the replacement scale of which they served in the Marketing Board before dissolution as well as for continuity of service. The petitioner had not joined despite his posting which the learned Writ Court has found prima facie a case of disobedience. The petitioner joined only when he got a post of his choice with effect from 17.09.2011 in Agriculture Department. He had remained absent for a period of more than three years, still the respondents treated the unauthorized absence of the petitioner as extra-ordinary leave of 1183 days while providing them continuity of service for other purposes.

5. The learned Writ Court found that the petitioner had been granted progression under the A.C.P. Scheme of 2003 but he was praying for Third Progression under the Modified Assured Career Progression Scheme which was not a relief prayed in the Writ



Application. The Writ Court still directed the respondents that in case the petitioner raises his grievance in respect of grant of progression under the Modified Assured Career Progression, the same shall be considered and disposed of on its own merit in accordance with law.

6. Learned counsel for the petitioner-appellant submits that the learned Writ Court refused to grant relief as regards payment of salary for the period 02.09.2008 to 30.11.2011 without considering the fact that the petitioner along with his association was prosecuting his remedy before this Court in CWJC No. 8012 of 2004 which was finally disposed of only on 27.07.2010 vide judgment and order as contained in Annexure-3 to the Writ Application. By this judgment a direction was issued to absorb the petitioner and others in the replacement scale on which they served in the Marketing Board before dissolution as well as for continuity of service. According to him, in these circumstances the learned Writ Court would have exercised its extra-ordinary power under Article 226 of the Constitution of India to direct the respondents to pay the salary, etc., to the petitioner.

7. On the other hand, learned counsel representing the State submits that the reason assigned by the learned Writ Court itself shows the conduct of the petitioner in not obeying the interim order of the Court directing him to join during pendency of the Writ



Application. He has drawn our attention towards Annexure-2 to the Writ Application which is an order dated 26.09.2008 passed in CWJC No. 8012 of 2004.

8. Having heard learned counsel for the parties as well as learned counsel representing the State, we find on perusal of Annexure-2 to the Writ Application that by order dated 26.09.2008 the learned Writ Court while allowing the amendment application being I.A. No. 5461 of 2008 by which the petitioners in the said case sought to challenge the order dated 02.09.2008 passed by the respondent authority directing the respondents to accept joining of the petitioners within the specified time, the learned Writ Court at the relevant point of time did not grant any stay of the operation of the order dated 02.09.2008. The learned Writ Court rather directed the respondents in the following words:-

“In the meantime the joining of the petitioners has to be accepted subject to the final orders in the Writ Petition.”

9. Admittedly, the petitioner did not join and remained idle for over years during pendency of the Writ Application. The learned Writ Court has rightly observed that the respondents have still shown magnanimity by accepting the joining of the petitioner allowing 1183 days to be treated as extra-ordinary leave. In these circumstances when the petitioner did not work or abstained himself from joining



despite there being an interim order of the Court, the learned Writ Court has rightly refused to grant salary to the petitioner for the period sought for on the principle of 'No Work No Pay'. We do not find any illegality in the same.

10. As regards the claim for Third Progression under the Modified Assured Career Progression Scheme, the learned Writ Court has given liberty to the petitioner with appropriate direction to the respondents to consider his grievance in respect of grant of progression under the Modified Assured Career Progression Scheme and to dispose of the same on its own merit in accordance with law. Again we find that despite there being such liberty granted to the petitioner, the petitioner has moved this Court in appeal, without there being any illegality or valid ground to challenge the impugned order of the learned Writ Court. We also find from the order dated 27.07.2010 passed in the batch of Writ Applications including CWJC No. 8012 of 2004 (Annexure-3 to the Writ Application) that during pendency of the Writ Application the State Government had passed the Resolution dated 17.05.2010 approving the scheme formulated by a Committee of Secretaries of the State Government recommending absorption of the employees of the Bihar State Marketing Board (Dissolved) in the light of the provisions contained in Section 6 of the Repeal Act. It is in the light of the said Resolution dated 17.05.2010



the petitioner and others were taken in the replacement / revised scale on which they were earlier serving in the Marketing Board before its dissolution with continuity of service w.e.f. 02.09.2008. If the petitioner was willing to raise any grievance with respect to payment of salary for the period he had not joined and had not worked despite there being an interim order as contained in Annexure-2 to the Writ Application, he should have raised such issues at the relevant time when the batch of Writ Applications were taken up for final disposal.

11. In view of disobedience shown to the order of the respondents as also the interim order of the Court and thereby not rendering any service, the petitioner has made himself disentitled for the reliefs as prayed in the Writ Application.

12. We do not find any reason to interfere with the impugned order of the learned Writ Court.

13. The Letters Patent Appeal has no merit. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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