

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1072 of 2015

In
Civil Writ Jurisdiction Case No.2807 of 2015

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1. Bishwanath Paswan, Son of Shri Dhuri Paswan, Resident of Village- Kulakhas, Police Station- Kasva, District- Purnea.
 2. Sagam Lal Rajak, Son of Late Banvari Rajak, Resident of Village- Mahthava, Police Station- Bhargama, District- Araria.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Chairman, District Board, Araria.
4. The Chief Executive Officer, Araria.
5. The District Education Officer, Araria.
6. Incharge Headmaster, Rajkiyakrit High School, Jokihat, Araria.
7. The Treasury Officer, Araria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Singh, Adv. Mr. Gajanan Arun, Adv.
For the Respondent/s	:	Mr. S.S. Prasad- SC-10

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 21-01-2019

Heard Mr. Vijay Kumar Singh, learned counsel for the appellants and Mr. S.S. Prasad, S.C.-10 for the State.

The appellants came before this Court through the writ petition in question seeking, inter alia, direction to the respondents to make their payment of arrears of salary for the period 15.03.2011 to 21.01.2014 i.e. the period in between their respective termination and their reinstatement under the orders



of this Court passed in C.W.J.C. No. 8464 of 2011 and analogous cases and it is because the writ petition is dismissed that the writ petitioners as appellants are before this Court.

Though we are not in agreement with the reasons assigned by the learned Single Judge to dismiss the writ petition but yet we do not find merit in the prayer made, requiring interference with the opinion of the learned Single Judge to dismiss the writ petition.

We have already noted the relief prayed by the writ petitioners and which actually is founded on the judgment of a learned Single Judge passed in C.W.J.C. No. 8464 of 2011 filed by the petitioner no. 1 which was heard analogous with other writ petitions including the writ petition by the petitioner no 2 arising from C.W.J.C. No. 9274 of 2011. These writ petitions were filed by these petitioners along with others feeling aggrieved by their respective termination which took place in the year 2011, for different reasons. Insofar as the petitioner no. 1 Bishwanath Paswan is concerned, it is because his name figured in the select list despite his alleged non-participation in counselling, that the termination order was passed. The learned Single Judge while considering the matter found the termination order issued after four years of joining vide memo no. 247 dated



15.03.2011, illegal and consequently it has been set aside but while doing so the learned Single Judge had directed for payment of salary from the date the petitioner no. 1 gives his joining, which joining was given by the said petitioner on 21.01.2014.

Insofar as the petitioner no. 2 is concerned, a similar reinstatement is ordered but the entitlement of salary to the petitioner no. 2 is given only from the date of his joining. It is not in dispute that following the order passed by the learned Single Judge, the petitioners have given their joining and since obviously the learned Single Judge did not allow their arrears of salary despite reinstatement that it was not paid and for this purpose they have filed the present writ petition. It is again not in dispute that even when the learned Single Judge while allowing the writ petition in the previous round did not grant the benefit of arrears of salary to these petitioners, they did not move in intra court appeal to seek such relief and thus the order has attained finality.

In such circumstances, the petitioners cannot be permitted to re-agitate the matter which was much open at the time of disposal of the previous round litigation and has been put at rest by passage of time. The reasons assigned by us



hereinabove not to grant indulgence to the relief prayed by these appellants-writ petitioners may be different but the result is the same.

Since the termination order was set aside by the learned Single Judge in the earlier round of litigation to order for reinstatement, even if the benefit of arrears of salary on such reinstatement was not allowed and for the same reason, we have also declined to grant indulgence to such relief but it goes without saying that even if the benefit of arrears of salary has been denied to the petitioners, nonetheless they would be entitled for counting the past period of service for the purpose of determination of retiral benefits.

The order of the learned Single Judge is modified to the extent indicated above.

The appeal stands disposed of with the observations and directions above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

devendra/priyanka

AFR/NAFR	NAFR
CAV DATE	NA
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