

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.516 of 2018

In
Civil Writ Jurisdiction Case No.18200 of 2016

Ram Ashray Yadav, son of Late Ram Chandra Yadav, Resident of 01, Shivpuri, Boring Road, Behind A.N. College, Post Office +Police State-Shastri Nagar, District and Town-Patna.

... .. Petitioner- Appellant/s

Versus

1. Patna University, through its Registrar, Patna
2. The Vice- Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Finance Officer, Patna University, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arvind Kumar Tiwary, Advocate
		Mr. Kumar Saurabh Advocate
For the Patna University :		Mr. Md. Nadim Seraj, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-01-2019

Heard learned counsel for the appellant and the
learned counsel for the respondent-University.

The appeal questions the correctness of the judgment dated 14th March, 2018 whereby the writ petition filed by the appellant claiming pensionary benefits as a faculty member of the Patna University has been declined. The reason given by the learned Single Judge is that the appellant was granted extraordinary leave in the year 1974 whereafter he did not return to the University and therefore, his unauthorized absence led to the filling up of the post by offering it to one Shri Surendra



Mohan Ashok, vide an order dated 27th April, 2000. It is undisputed that the said order remains unchallenged. The learned Single Judge, therefore, came to the conclusion that the appellant was not entitled to any relief of pension in view of the background of his services, more so, when after he returned from Kuwait, he joined as a Chairman of the Bihar Public Service Commission and then also served as a Vice-Chancellor of the Bhagalpur University. Then too also he did not stake any such claim arising out of his services in the Patna University.

Learned counsel for the appellant contends that as a matter of fact, the counter affidavit was served, but no time was allowed to contest the same and even otherwise a clear stand had been taken in the writ petition that the Patna University itself had granted leave and had acknowledged the lien of the appellant which was continuing, as such treating the appellant to be unauthorizedly absent and then denying him pensionary benefits was an erroneous conclusion.

It is also urged by the learned counsel for the appellant that the applicability of the rules have also been misconstrued and an incorrect inference has been drawn as if the appellant was not entitled to the pensionary benefits in the absence of any statutory rules supporting his claim.



Learned counsel for the University, on the other hand, contends that the appellant had virtually abandoned his service and was unauthorizedly absent without any extension of leave beyond the period of extraordinary leave which is the only permissible limit of five years under the relevant statute. It is urged that in such circumstances, when the appellant himself has clearly defaulted in either approaching the University or joining his post without any further intimation to that effect, then in that event, the conclusion drawn by the learned Single Judge cannot be said to be suffering from any infirmity much less legal infirmity.

We have considered the submissions raised and the fact remains that the appellant came to be granted extraordinary leave without pay to serve Kuwait University with effect from 1st of September, 1974. It is also undisputed that the appellant continued to work in Kuwait University till September, 1990, i.e., for a period of almost 16 years. There is nothing on record to indicate about the appellant having reported to the University about his return from Kuwait or intending to join the University. In the absence of any such material on record, the allegation contained in Paragraph-7 of the writ petition that the University granted him leave even for a period beyond five years and



acknowledged the lien of the appellant does not appear to be correct and which has been specifically denied in Paragraph-6 of the counter affidavit. Even along with the memo of this appeal, nothing has been brought on record which may impel us to gather an inference otherwise and in the absence of any such explanation on the part of the appellant about his absence from the University for 16 years without any information, the contention raised on behalf of the appellant cannot be entertained.

For all the reasons aforesaid as well as for the reasons already recorded by the learned Single Judge, we do not find any merit in the appeal which is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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