

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9242 of 2020

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Braj Kishore Prasad Son of Late Falli Prasad, resident of Asha Kutir, New Punaichak, Police Staiton- Shastri Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Visvesvaraya Bhavan Patna.
2. The Principal Secretary Road Construction Department, Visvesvaraya Bhavan, Bihar, Patna.
3. The Special Secretary Road Construction Department, Bihar, Visvesvaraya Bhawan Patna.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

- 3 26-03-2021 1. The present petition has been filed for payment of arrears of salary from 01.07.2018 to 09.01.2019.
2. The short facts of the case are that by a notification dated 21.06.2018, the petitioner was deputed from the Road Construction Department to the Urban Development and Housing Department without his consent, which was challenged by the petitioner before this Court in C.W.J.C. no. 12010 of 2018 and this Court by an order dated 03.10.2018 observed as follows :-

“ Let the order of deputation be kept in abeyance and this Court further directs the Principal Secretary, Road



Construction Department to pass a fresh order and the order of deputation will be abide by the fresh order to be passed by the Principal Secretary.

If the petitioner joins at the substituted place of transfer, in that circumstances, no action will be taken for his failure to join at Saharsa but, if he fails to do so, in such circumstances, the authority concerned will be at liberty to take action in accordance with law.

It is made clear that the private respondent will not be affected in any manner if the petitioner is transferred at the new place of posting.

With the aforementioned observation and direction, this writ application is disposed of.”

3. The learned counsel for the petitioner has submitted that pursuant to the aforesaid order dated 03.10.2018 passed in C.W.J.C. no. 12010 of 2018, the respondent-authorities passed an order dated 09.01.2019, whereby and whereunder the petitioner was repatriated to the parent department and posted as Deputy Chief Bridge Specialist (Executive Engineer), Bridge Management Sub-Section, Road Construction Department, Patna.

It is the contention of the learned counsel for the



petitioner that immediately upon the order dated 09.01.2019, the petitioner joined at his aforesaid place of posting in the Road Construction Department on 10.01.2019, vide Annexure 8 at page 36 of the present petition, hence is entitled to salary for the period 01.07.2018 to 09.01.2019

4. *Per contra*, the learned counsel for the respondents by referring to the counter affidavit filed in the present case, has submitted that the Department had sought legal opinion and the period in question has been decided to be regularized from the unutilized earned leave account/ extraordinary leave and when the computation is made, the payments would follow.

5. I have heard the learned counsel for the parties and gone through the materials on record. It is very clear from the directions issued by a co-ordinate Bench of this Court vide order dated 03.10.2018 passed in C.W.J.C. no. 12010 of 2018 that in case, the petitioner joins at the substituted place of transfer, no action will be taken for his failure to join at the transferred post at Saharsa. In such view of the matter, this Court finds that since the petitioner has already joined promptly on 10.01.2019, on the substituted place of transfer, pursuant to the transfer order dated 09.01.2019, the respondents are precluded from withholding the salary of the petitioner for the aforesaid period i.e. from



01.07.2018 to 09.01.2019, hence the respondents are directed to make payment of the salary for the said period, forthwith.

6. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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