

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.813 of 2018

In
Civil Writ Jurisdiction Case No.9492 of 2015

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Bijay Bhushan Singh, S/o Brahmdeo Pd. Singh, resident of Mohalla- Kathari
Bagh, Chota Telpa, P.S. Town Chapra, Dist- Chapra

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary, Health Govt. of Bihar, Patna
2. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
3. The Regional Deputy Director Health Services, Saran Division at Chapra,
Distt. - Chapra.
4. The Medical Officer cum CMO, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kumari Rashmi
For the Respondent/s : Mr.S.D.Yadav -Aag9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 29-01-2021

Heard the parties.

Aggrieved by judgment and order dated 02.05.2018
passed in C.W.J.C. No.9492 of 2015 passed by a learned
Single Judge of this Hon'ble Court dismissing the writ petition,
appellant/petitioner has preferred this LPA.

Appellant/petitioner had filed writ petition for
payment of arrears of salary for the period 1.11.2007 to the date
of superannuation, i.e., 31.07.2010. Writ petitioner was
appointed on the post of Computer which is meant for collecting



the data from the rural areas, however, due to his ill-health, on his representation, he was made clerk and was posted as clerk vide memo no.47 dated 24.12.1985. Initially, post of clerk had higher salary from the post of computer, however, subsequently, both post carried same salary.

Writ petitioner was allowed to function on said post till 26.10.2007, however, vide memo no. 4068 dated 22.10.2007, petitioner along with others were reverted back on their parent posts, i.e. the post of Computer. Petitioner preferred writ petition being CWJC No. 1827 of 2008 which was allowed on 25.8.2010 and order of reversion was quashed and petitioner was directed to be reinstated with all consequential benefits, however, petitioner had retired from service prior to passing of said order.

Petitioner has filed present writ petition being C.W.J.C. No.9492 of 2015 on refusal of payment of salary for the period from 1.11.2007 to the date of superannuation, i.e., 31.07.2010 by the authorities. It was submitted on behalf of State that in compliance of order dated 25.8.2010, all the consequential benefits of the post of clerk were paid to writ petitioner, however, no salary could be paid to the petitioner for the period from 14.11.2007 to 31.07.2010 because during this



period, he remained absent and did not perform his duty.

Learned Single Judge has found that the case of writ petitioner is not identical with similarly situated persons who were also reverted and their order of reversion was quashed as in their case, they had received lesser salary after reversion which was paid to them and after setting aside of order of reversion, as they were present and performed their duty, they were paid arrears of different of salary for said period, however, since petitioner did not work and absconded, no salary was paid to him for said period and as such, he is not entitled for salary for said period.

Writ petitioner could not place any document in support of his claim that during said period, he was present and discharged his duty. There cannot be any presumption that as the authorities did not initiate any disciplinary proceeding against writ petitioner for unauthorized absence, it will be presumed that he performed his duty during said period.

Even thereafter, learned Single Judge has given liberty to the appellant/writ petitioner to place relevant facts before the authorities for persuading them to make available the benefit of salary for the period from the date of reversion till the date of superannuation.



This Court does not find any error or infirmity in the order passed by learned Single Judge requiring any interference by this Court. Accordingly, the LPA is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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