

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1450 of 2013

In
Civil Writ Jurisdiction Case No.14039 of 2005

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Sri Kailash Bihari Choudhary Son Of Late Darsu Choudhary Resident Of
Village- Bhagatpur, P.S.- Balia, District- Begusarai

... .. Appellant/s

Versus

1. The State Of Bihar and Ors Government Of Bihar, Sinchai Bhawan, Patna
2. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Engineer-In-Chief, South-Cum-Special Secretary, Water Resources Department, Sinchai Bhawan, Patna
4. The Joint Secretary Managing Cell Establishment, Water Resources Department, Government Of Bihar, Sinchai Bhawan, Government Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Awadhesh Kumar Mishra, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 06-07-2022

Heard learned counsel for the parties.

2. The present appeal arises out of order dated 19.06.2013 passed by the learned Single Judge (Hon'ble Mr. Justice S.N. Hussain, as his lordship then was) by which the learned Single Judge chose not to interfere with the Memo No.5509 dated 28.09.2004 issued by the Joint Secretary, Water Resources Department, Government of Bihar, Patna rejecting the



claim of the appellant-petitioner for grant of leave for the period 10.04.1997 to 01.01.1998.

3. The matrix of facts giving rise to present appeal are as follows.

4. On 14.10.1966, the appellant-petitioner was appointed as an Engineer Assistant in the Department of River Valley. At the relevant time, i.e. 26.12.1996, the petitioner while working as an Executive Engineer, Drainage Division, Hajipur was transferred to the Irrigation Division, Navanagar. However, he chose not to join the new post and after few months submitted an application for sanction of leave. He later joined on 05.03.1997 but again made an application for grant of leave from 23.03.1997 to 31.05.1997 for the treatment of his wife. Surprisingly, he made another application dated 23.03.1997 for grant of leave for the aforesaid period for the treatment of his own eyes in Shankar Netralaya, Madras (now Chennai). On 14.05.1997, his leave application was rejected in view of the work of 'Malay Barrage'. The rejection of the application hardly affected the appellant-petitioner who proceeded on casual leave from 10.04.1997 to 15.04.1997 and thereafter remained absent continuously.

5. As the Monsoon was fast approaching; left with no remedy, the respondent authorities directed the Executive



Engineer, Flood Control No.I, Ara vide an order dated 29.05.1997 to take over charge of the Irrigation Division, Navanagar. This was followed by posting of an Independent Executive Engineer, Sri Kapildeo Singh in the Irrigation Division, Navanagar vide Notification dated 17.06.1997.

6. Upon knowledge of the aforesaid development, the appellant-petitioner immediately chose to join the headquarter on 18.07.1997 and thereafter got himself posted at Dam and Barrage Design Division, Jamshedpur (then in Bihar) vide Notification dated 31.12.1997. Later, he made an application for sanction of the leave which was rejected on 13.07.1998.

7. The appellant-petitioner filed writ petition bearing WP(S) No.5898 of 2001 before the Jharkhand High Court, Ranchi which was disposed of on 07.12.2001 observing that the petitioner being posted at Patna at the relevant time, so the matter may be agitated before the State of Bihar by filing appropriate representation. The representation preferred by him was rejected on 07.01.2002. This followed filing of CWJC No.1606 of 2004 which was disposed of on 14.05.2004 by a bench of the Patna High Court directing him to prefer representation before an Appropriate Authority.



8. Accordingly, the petitioner preferred representation which was rejected by speaking order dated 28.09.2004 which prompted the appellant-petitioner to prefer CWJC No.14039 of 2005 with the following prayer:

“(a) for quashing of the memo no. 120-Patna dated 07.01.2002 as well as letter no. 1212 dated 13.07.1998 be set aside whereby and whereunder the commuted leave for the period from 10.04.1997 to 17.07.1997 and also the period of waiting for posting from 18.07.1997 to 01.01.1998 have been rejected;

(b) the memo no. 5509-Patna dated 28.09.2004 issued by the Joint Secretary to the Government, Water Resources Department, Bihar, Patna be set aside whereby and whereunder the claim of the petitioner for grant of leave for the period 10.04.1997 to 01.01.1998 has been rejected granting extraordinary leave and further it has been directed that the said period shall not be counted for the purpose of pension;

(c) Respondent be directed to treat the petitioner on duty during the period from 10.04.1997 to 17.07.1997 and from 18.07.1997 to 01.01.1998 by virtue of Rule 234 of the Bihar Service Code and Leave Admissibility Report issued by the Accountant General, Bihar, Patna.



(d) Respondents be directed to grant consequential benefits to the petitioner after regularizing the said period.”

9. The matter was taken up by the learned Single Judge and vide an order dated 19.06.2013, the Court held as follows:

“10. From the aforesaid facts, it is quite apparent that the petitioner had been raising frivolous claims and was himself responsible for his predicaments. It was only after two and a half months of the issuance of notification dated 26.12.1996 that the petitioner took over charge of Irrigation Division, Navanagar, on 05.03.1997 and immediately thereafter he applied for leave twice on different dates specifying two different reasons, the first for his wife’s treatment and second was for his own treatment. Although his leave applications were rejected by the authorities, but inspite of it he proceeded on leave at his own level and immediately after posting of another Executive Engineer in Irrigation Division, Navanagar, on 17.07.1997, the petitioner joined at the headquarter on 18.07.1997 and submitted fitness certificate of a local Doctor.

11. In the said circumstances, it is found proved that the petitioner’s intention was simply not to work in Irrigation Division,



Navanagar and at the same time he wanted to be posted at another place, which he achieved successfully in an illegal manner by disobeying the higher authorities by wilful absence from his post despite rejection of his application for leave.”

10. Accordingly, the learned Single Judge held that the order of the authorities concerned appears to be legal and justified as well as in accordance with the prescribed rules and accordingly having found no merit in the claim dismissed the writ petition.

11. The present appeal has been preferred against the said order dated 19.06.2013 passed in CWJC No.14039 of 2005.

12. We have gone through the materials on record and have heard the submissions put forward by the respective parties at length. From the record, it is clear that the appellant-petitioner after his transfer from Hajipur deliberately chose to absent himself till he got a new posting at Jamshedpur (then in Bihar).

13. Despite being in service for thirty long years, he chose not to join the office fully realizing that the absence of an officer of the rank of Executive Engineer during the Monsoon season can jeopardize the ongoing work at Navanagar.

14. It was only after he settled to his new post that he wanted his illegal absence to be legalized which was rejected by



the State of Bihar under the signature of the Joint Secretary and issued vide memo no.5509 dated 28.09.2004. The learned Single Judge while dismissing the writ petition was fully justified in observing that he wanted to be posted at a place which he achieved successfully.

15. We thus hold that the order dated 19.06.2013 passed in CWJC No.14039 of 2005 need no interference and the appeal herein is dismissed with costs which is quantified at Rs.10,000/- (Rupees Ten Thousand Only) to be paid to the Bihar State Legal Services Authority within a period of one month.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
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