

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.623 of 2018

In

Civil Writ Jurisdiction Case No.2046 of 2005

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Dhurandhar Prasad Singh son of Sri Jai Krishna Singh, Resident of Village-Simaria Khurd, P.O.- Jhelhari, Via- Kopa Bazar, P.S. Revelganj, District-Saran Chapra at present working as Routine-cum- Examination Clerk in Ganga Singh College, Chapra, District- Saran Chapra.

... .. Appellant

Versus

1. The State Of Bihar
2. The Secretary, Human Resources Development Higher Education Department, Government of Bihar, Patna
3. The B.R.A. Bihar University, Muzaffarpur through its Registrar.
4. The Vice- Chancellor, B.R.A. Bihar University, Muzaffarpur.
5. The Registrar, B.R.A. Bihar University, Muzaffarpur.
6. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.
7. The J.P. University, Chapra, District Saran through its Registrar.
8. The Vice- Chancellor, J.P. University, Chapra, District- Saran.
9. The Registrar, J.P. University, Chapra, District- Saran.
10. The Finance Officer, J.P. University, Chapra, District- Saran.
11. The Principal, Ganga Singh College, Chapra, District- Saran.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Abhinav Srivastava, Advocate
For the State/	:	Mr. Mritunjay Kumar, Advocate
(Universities)		Mr. Anil Singh, Advocate
		Mr. Vikas Ratan Bharti, Advocate
		Mr. Nagendra Kumar Singh, Advocate
		Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 12.09.2022

Heard learned counsel for the appellant, learned

counsel for the State and learned counsel for the J.P.

University.

2. The present LPA has been preferred against the judgment dated 13.02.2018 passed by Single Judge in CWJC No. 2046 of 2005 by which it has been held that the appellant is not entitled for claiming payment of salary for the period between 11.10.1977 to March, 2002 on the account of laches of his part in claiming the such payment.

3. The case of the appellant was that he was initially appointed on a Class-III post in a private college, by the Principal of the college on the post of Routine Clerk-cum-Examination Clerk by order dated 08.01.1977, on which post he joined the same day. Such appointment was later approved by the Governing Body of the college in its meeting dated 27.08.1977. However, his services were terminated by order dated 11.10.1977 in terms of the resolution of the Governing Body. The petitioner challenged the same in Title Suit No. 115 of 1977 before the Munsif Ist, Chapra and by order dated 19.01.1978, the Court passed an order restraining the defendants from implementing the order of dismissal dated 11.10.1977. In the meantime, the college became a constituent unit of the then University of Bihar in the year 1980 and the Principal of the college wrote to the University on 19.02.1982 seeking instructions with regard to the petitioner in light of the

interim order of the Munsif in the Title Suit indicating that the petitioner had been working in the college and had been pressing for salary which had been paid to him only till 30.09.1977. Earlier the Principal of the college had written to the Deputy Secretary of the Higher Education Department, Government of Bihar on 10.12.1980 giving names of eight persons who had been appointed on sanctioned posts after 15.08.1976, in which the name of the petitioner also figured. The Title Suit was ultimately decreed in favour of the petitioner by judgment dated 14.07.1982, though ex-parte, and the termination order was declared illegal and the defendants were permanently restrained from acting upon the said order of dismissal. Due to non-implementation of the judgment in the Title Suit by the authorities, the petitioner filed Execution Case No.3 of 1983 before the Munsif Ist, Chapra. Initially, the Execution Case was allowed ex-parte, but later on a miscellaneous case was filed by the University of Bihar and the ex-parte order in the Execution Case was recalled by order dated 06.12.1983. Being aggrieved, the petitioner filed Civil Revision No. 2004 of 1986 before this Court and by order dated 07.04.1993, the Civil Revision was allowed setting aside the order passed by the Munsif dated 06.12.1983 in Execution

Case No. 3 of 1983 and the matter was remanded to the Executing Court for fresh consideration. In the meantime, J.P. University, Chapra was created in the year 1992 and the college in question became a constituent college of the new J.P. University. Subsequently, the Munsif Ist, Chapra by order dated 22.09.1997, rejected the objection filed by the J.P. University and the petitioner was directed to take further steps in the Execution proceeding. The J.P. University moved this Court in Civil Revision No.98 of 1998 against the said order and the application was allowed by order dated 22.07.1999 by which the order dated 22.09.1997 was set aside. The petitioner approached the Hon'ble Supreme Court in S.L.P. (Civil) No. 19378 of 1999, which was finally converted into Civil Appeal No. 4481 of 2001 and by a detailed judgment, the Civil Appeal was allowed by order dated 24.07.2001. Subsequent thereto, by order dated 10.01.2002 passed in the Execution Case, direction was issued to the Registrar J.P. University, Chapra and the Principal of the college to ensure compliance of the judgment of the Title Suit dated 14.07.1982. In terms thereof, the Registrar of J.P. University under letter dated 16.03.2002 informed the Professor Incharge of the college with regard to approval for joining by the petitioner with

immediate effect. Under letter dated 19.03.2002, the professor Incharge of the college asked the petitioner to assume charge of the post which he did on the same day. The J.P. University filed compliance before the Execution Court whereafter the case was finally disposed off. The petitioner represented before the authorities for payment of his arrears of salary for the period 11.10.1977 till 18.03.2002 but the same went unheeded leading to filing of the present writ application.

4. The case of the J.P. University is that the appellant had earlier moved before the Court of Munsif with declaratory relief against the Secretary of the College and sought mandatory injunction from terminating his service in which he got relief on 19.01.1978 restraining from giving effect to the termination order dated 11.10.1977. Appellant never raised any prayer for getting his salary throughout his entire litigation till he move before this Court, in the writ petition i.e. in the year 2005. The question of applicability of granting relief as mentioned in Order- 2 Rule-2 of the Code was also raised.

5. Learned Single Judge upon considering the case of the parties has finally decided and hold that the appellant would be entitled to continuity in service right from the

beginning though notionally for the purposes of other benefits including post retiral but the actual payment of salary etc. could not be given to him.

6. In this background there is only one issue which is subject to consideration before this Court that “whether the appellant is entitled for claiming payment of salary for the period between 11.10.1977 to March, 2002 on account of laches on his part in claiming the said payment will be made to him or not.”

“With a view to decide this question, it is important to see the relief prayed in the title suit which is Annexure-4 of the writ petition i.e. the plaintiff filed a suit for declaration that order dated 11.10.1977 passed by Defendant No.2 Secretary terminating the services of the plaintiff is void and illegal and is prayed for issuance of order of an interim injunction restraining the defendant from terminating the service of the plaintiff.”

7. This order was an ex-parte order vide judgment dated 14.07.1982 and decree dated 11.08.1982 against the said decree, the appellant preferred execution in which objection under Section 47 of the CPC was filed and it was allowed in favour of the College against which the present appellant has

preferred Civil Revision No.2004 of 1986 which was remanded back and fresh order vide order dated 22.09.1997 was made in the Execution Case No.3 of 1983 in which J.P. University (present respondent no.7) was party. The said decision was rejected and J.P. University has lost against the said decision. J.P. University has filed Civil Revision No.98 of 1998 before this Court which was allowed and it has been decided by High Court that the decree dated 16.08.1982 passed in Title Suit No. 115 of 1977 not executable against J.P. University.

8. Against the said decision of Single Judge dated 22.07.1999 passed in Civil Revision No. 98 of 1998, the present appellant has preferred SLP before Hon'ble Supreme Court of India which was finally heard as Civil Appeal No.4481 of 2001. In the said Civil Appeal the question of Section 47 of Code of Civil Procedure was tested and finally it was allowed and the order passed in Civil Revision No. 98 of 1998 was set aside and the matter was again sent back before the Execution Munsif-Ist, Chapra in Execution Case No. 3 of 1983. Execution Court vide order dated 10.01.2002 ordered for implementation of the decree within one month. In compliance of the same the appellant was allowed to join duty

in the college and the Principal of college has been directed to accept the joining of decree holder. The Executing Court had satisfied that its order has been complied with. On 06.04.2002 the appellant has filed an application before the Executing Court that he was allowed to join but salary has not been paid, in this regard, the Executing Court vide order dated 13.12.2004 had passed an order and hold that the decree holder was not demanded any relief relating to payment of salary therefore, the relief which was not granted in decree cannot be allowed in favour of the decree holder. Against the said decision of Execution Munsif, Saran at Chapra in Execution Case No. 3 of 1983 the appellant did not prefer any revision further and sat over the matter and thereafter preferred the writ petition being CWJC No. 2046 of 2005 raising all earlier points and started demanding arrears of salary due to the petitioner since 11.10.1977 to the date of his joining till March, 2002.

9. The learned Single Judge have discussed the entire issues relating to grant of relief with regard to payment of his salary for above mentioned period in paragraph-7 of his judgement which are as follows:

“Having considered the matter in its

entirety, the Court finds substance in the objection of learned counsel for the J.P. University with regard to maintainability of the present writ petition. The petitioner had filed a suit against his termination order for declaring the order to be null and void and when he got *ad interim* injunction on 17.01.1978, it is immaterial as to whether the authorities implemented the order or not, but in law the order having been stayed, the petitioner automatically stood reinstated in service and was entitled to salary. The Court would pause here and further indicate that right to salary does not depend from a person either joining or being allowed to work. It is contingent upon his status as an employee. Once the order of termination has been stayed, his status as employee stood revived and he is entitled to salary irrespective of whether the employer assigns or takes any work from him, which is of no consequence in the eyes of law. The petitioner, thus, had a cause of action soon after 17.01.1978, when the order of termination

was stayed by the Munsif Ist, Chapra in the Title Suit and him not having agitated or raised the claim for salary before any authority or forum or Court since then, clearly now, cannot be allowed to do so. Moreover, when admittedly after having joined on 19.03.2002, him again remaining silent and in fact raising this issue before the Execution Court, which has been negated in the order dated 13.12.2004 by the concerned Court, moving before the High Court in the present case under Article 226 of the Constitution of India is clearly misconceived. The fact that the petitioner was aware that he had a claim for salary and had also raised the same, is reflected from the letter written by the principal of the college to the Registrar of the then Bihar University dated 19.01.1982. Thus, the petitioner having raised his claim before the college for salary then itself and upon the same not being granted choosing not to file suit or an amendment in the original Title Suit or even before the High Court or the Hon'ble Supreme Court, has clearly given up his claim

and, thus, at this highly belated stage, cannot be allowed to revive the same. Further, an attempt was also made by him to claim salary before the Execution Court, which though has been negated, clearly indicates that the petitioner was fully aware that he had to claim for salary which was denied to him and, thus, he had raised such claim, way back in the year 1982 before the college and also later before the Execution Court. Thus, the petitioner being aware that his salary was being denied and him having moved the authorities at the relevant time itself and them not paying salary to him, the petitioner thereafter not moving the Court including the High Court under Article 226 of the Constitution of India, is a clear pointer to the laches on his part which under law can be construed as waiver and estoppel against such cause and bars him now from claiming payment of salary for the said period. It is not in dispute that upon his joining, he has been paid his due salary. At this stage, learned counsel for the J.P. University was not in a position to controvert or

dispute the legal position that in terms of the order staying the dismissal of the petitioner from service by final decree of the suit, which has been affirmed till the Hon'ble Supreme Court, the petitioner would be entitled to continuity in service right from the beginning, though notionally, for the purposes of other benefits including post retiral, but actual payment of salary etc. cannot be given to him.”

10. There is only one letter which is annexed as Annexure-6 to the writ petition i.e. letter no.319 dated 19.02.1982 of the Principal of G.S. College, Chapra to the Registrar, Bihar University, Muzaffarpur indicating therein that appointment of appellant was approved by the resolution dated 27.08.1977, he was terminated w.e.f. 11.10.1977, his termination order was restrained by the Munsif-Ist dated 17.01.1978. He has been paid salary upto 30.09.1977. As per letter dated 19.02.1982 it appears that the appellant has worked in the college continuously upto 19.02.1982, therefore, he is entitled for the salary for the period he has worked, which is clear from the documents already available on the records.

11. Hence, upon considering Annexure-6, we are of the view that the appellant is entitled for his salary for the period he actually worked i.e. from 11.10.1977 to 19.02.1982.

12. The respondent is directed to calculate the salary of appellant for the period from 11.10.1977 to 19.02.1982 and to pay the same with 6% interest on the same amount till the date of payment.

13. With this observation, the present LPA is partly allowed.

(Rajan Gupta, J.)

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	