

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1665 of 2018

In
Civil Writ Jurisdiction Case No.17937 of 2010

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Arvind Kumar S/o Ram Lagan Prasad R/o Vill Mahanda, P.S. Barbigaha,
Distt.- Sheikhpura, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Secretary Building Construction Department Government of Bihar,
Patna.
3. The Additional Secretary, Building Construction Department Government of
Bihar, Patna.
4. The Joint Secretary, Building Construction Department Government of
Bihar, Patna.
5. The Special Secretary, Building Construction Department Government of
Bihar, Patna.
6. The Deputy Secretary, Building Construction Department Government of
Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kunal Tiwary, Adv.
For the Respondent/s : Mr. Ashok Dubey

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-03-2022

Heard Mr. Kunal Tiwary, learned counsel for the
appellant and Mr. Ashok Dubey for the State.

The appellant has challenged the order dated 20.06.2018
passed by the learned Single Judge in CWJC No. 17937 of 2010
whereby the challenge to the decision of the Government in not



granting even half salary to the appellant for his study leave period, which was refused, has been sustained.

Mr. Tiwary has drawn attention of this Court towards the order passed by a learned Single Judge dated 21.06.2010 in CWJC No. 17884 of 2009 whereby the challenge to the grant of conditional study leave to the appellant with a stipulation that it shall be without salary, was set aside and the Deputy Secretary, Building Construction Department, Government of Bihar, Patna was directed to reconsider the application of the appellant for allowing him half of the pay for the period of study leave, which was granted to him in the year 2007. It was directed that the aforesaid respondent shall pass an order within 6 weeks of the date of production/communication of this order.

Pursuant to the aforesaid order, the concerned respondent passed an order on 31. 8.2010, rejecting the claim of the appellant for being paid half salary as, in the first instance ,the appellant was not entitled for any leave because he had not completed five years of service but was granted leave on his extreme insistence and on the government finding that his learning would help the government but such leave was an extraordinary leave and it was specifically intimated to him that it shall be without salary.



The aforesaid order was challenged by the appellant before this Court in CWJC No. 17937 of 2010 whereby the learned Single Judge vide the impugned order dated 20.06.2018, sustained the aforesaid order rejecting the claim of the appellant to be paid half salary during period of his study leave.

Learned counsel for the appellant has submitted that once the conditional study leave order was quashed by this Court with a direction to the respondent authority to reconsider the claim of the appellant to get even half salary, the concerned respondent ought not to have taken another plea of the bar under Section 205 of the Bihar Service Code to refute the claim of the appellant. He has further submitted that the learning which he acquired during the study leave has been put to use for the department. He further submits that the entire scheme of the service code with respect to grant of study leave from Sections 205 to 2017 was discussed in the earlier order passed by this Court and it was found that in case of any study leave, at least half the salary was required to be paid.

We are afraid that the proposition is not in consonance with the scheme for grant of study leave under the Bihar Service Code. From the records, we find that the appellant was otherwise not entitled to any study leave because of his not having completed three years in service. However, his insistence was acceded to and



he was granted leave with specific stipulation that it shall be without pay. The same was accepted by the petitioner and he went on study leave.

The conditional order though had been set aside by another Bench of this Court way back in the year 2010 but, liberty was granted to the concerned respondent/Deputy Secretary of the Building Construction Department to reconsider the claim of the appellant. On reconsideration, it was found that the provision contained in Section 205 of the Bihar Service Code was not taken into consideration when such an order was passed.

Thus, we do not find any fault with the order impugned in the present petition which has dismissed the claim of the appellant on the anvil of consideration of the Section 205 of the Bihar Service Code.

Accordingly, this appeal, being devoid of any merits, is dismissed.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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