

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1230 of 2019

In

Civil Writ Jurisdiction Case No.285 of 2019

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Sanjay Kumar Singh Son of Late Ram Bilas Prasad Singh, Resident of
Village - Khuta Dih, Police Station - Barahiya, District - Lakhisarai.

... .. Appellant/s

Versus

1. The Bihar State Power (Holding) Company Limited through its Chairman-Cum-Managing Director, Vidyut Bhawan Bailey Road, Patna.
2. The Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan Bailey Road, Patna.
3. The General Manager-cum-Chief Engineer Kosi Area, Bihar State Power (Holding) Company Limited, Vidyut Bhawan Bailey Road, Patna.
4. The Electrical Superintending Engineer, Bihar State Power Supply Circle Munger.
5. The Electrical Executive Engineer, Bihar State Power Supply Company, Power Supply Division, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashank Shekhar Sinha, Advocate
For the BSPHCL : Mr. Kunal Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-09-2022

In the instant appeal appellant has assailed the order of
the Learned Single Judge dated 04.07.2019 passed in C.W.J.C. No.
285 of 2019.

2. The appellant – *Sanjay Kumar Singh* was appointed
on compassionate ground against Class III post. His appointment



was cancelled on 14.07.1993 and it was subject matter of writ petition C.W.J.C. No. 8884 of 1993 which was dismissed. Thereafter, feeling aggrieved by the order of this Court he preferred Civil Appeal No. 4149 of 2003 before the Apex Court. The Apex Court on 01.12.2011 passed the following order:

“We have heard learned counsel for the parties at some length. Though it is true that, at the relevant time, there was no policy with regard to appointment on compassionate ground, yet bearing in mind the fact that the appellant was appointed as an unskilled worker, along with some other similarly situated persons, with the consent of the highest authority of the respondent Board, in our opinion, strictly speaking, it cannot be said to be a backdoor appointment. Further, the mother of the appellant also did not prefer any claim under the Workmen’s Compensation Act, 1923 on the demise of her husband, though it is stated that she was entitled to. Moreover, it is also not disputed that appointment of the appellant to Class -III post was on his merit. Bearing in mind all these facts, peculiar to this case, we are of the opinion that the ends of justice would be served if the order cancelling the appointment of the appellant to Class – III post is set aside. However, the seniority of the appellant at class – III post shall be reckoned from the date of his actual appointment to the said post on 11th October, 1988, pursuant to the examination held for the said post on 8th May, 1988.

The appeal is disposed of accordingly with no order as to costs.”



3. The official respondents have implemented the order of the Supreme Court dated 01.12.2011 in reinstating the appellant. For the first time in the year 2019 raised the issue of back-wages from the date of cancellation of appointment till reinstatement. The same was not extended by the official respondents. Thus, he preferred C.W.J.C. No. 285 of 2019. The learned Single Judge rejected the claim of the appellant in the light of Apex Court decision dated 01.12.2011 passed in Civil Appeal No. 4149 of 2003. Hence the present appeal.

4. Learned counsel for the appellant vehemently contended that delay would not be a hurdle and it is a continuing cause of action. In respect of aforesaid contention, he relied on decision of the Apex Court in the case of *Union of India and Others vs. Tarsem Singh* reported in (2008) 8 Supreme Court Cases 648.

5. It is further submitted that appellant is entitled to arrears of salary for the intervening period from the date of cancellation of appointment till reinstatement in the light of Apex Court decision in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others* reported in (2013) 10 Supreme Court Cases 324, para 38.



6. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that the appellant has not sought for consequential benefits like arrears of salary in earlier litigation. Even assuming that he had demanded in the earlier case, the Hon'ble Supreme Court has restricted only to seniority from the date of actual appointment that is 11.10.1998. Therefore, cited decisions do not assist the appellant in the present case. There is no continuing wrong for the reasons that appellant has been paid salary from time to time as and when he was reinstated pursuant to the Apex Court decision dated 01.12.2011. Therefore, appellant has not made out a *prima facie* case and there is no infirmity in the order of the learned Single Judge.

7. Heard learned counsels for the respective parties.

8. The appellant was appointed on compassionate ground on 11.10.1988. His appointment order was cancelled on 14.07.1993 which was subject matter of litigation before this Court and Apex Court. Apex Court restricted grievance of the appellant to the extent of reinstatement and protecting seniority from the date of his initial appointment. Further, there is no observation that the appellant is entitled to consequential monetary benefits on the ground of setting aside the order of cancellation of appointment.



9. The cited decision namely *Union of India and Others vs. Tarsem Singh* reported in **(2008) 8 Supreme Court Cases 648** is in respect of continuing wrong. The said principle is not applicable to the case in hand for the reasons that as and when appellant was taken back to duty pursuant to the Apex Court decision dated 01.12.2011, the appellant is being paid salary from time to time. On the other hand, grievance of the present appellant is in respect of arrears of salary from the year 1993 to 2011. Therefore, the cited decision do not assist the appellant.

10. The citation *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others* reported in **(2013) 10 Supreme Court Cases 324, para 38** is also not assisting the appellant's case for the reasons that it all depends on each case read with factual aspect of the matter. In the present case Apex Court in its order dated 01.12.2011 made it clear that there is a protection to seniority above from the date of his initial appointment on 11.10.1998. In the light of order dated 01.12.2011, the appellant is not entitled to any arrears of salary from 14.07.1993 till reinstatement in the year 2011. Therefore, we find no infirmity in the order of the Learned Single Judge.



11. Accordingly, the present appeal stands dismissed while affirming the order of the Learned Single Judge dated 04.07.2019.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

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