

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1303 of 2018

In
Civil Writ Jurisdiction Case No.8835 of 2017

=====

Manoj Kumar Sinha S/o Late Hanuman Sharma Assistant, District Board,
Katihar, R/o Quarter No. 1, Gami Tola, Katihar, Town and District Katihar.

... .. Appellant/s

Versus

1. Zila Parishad, Katihar, through its Chief Executive Officer-cum-the Deputy Development Commissioner, Katihar, Bihar.
2. The Chairman, Zila Parishad, Katihar, Town and District - Katihar.
3. The Chief Executive Officer-cum-the Deputy Development Commissioner, Katihar Bihar.
4. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Purushottam Kumar Jha, Advocate
For the Respondent No.4	:	Mr. Pushkar Narain Shahi -AAG-6
For the Respondent Nos. 1 to 3	:	Mr. Mohit Raj, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

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

Date : 18-04-2023

In the instant L.P.A., the appellant has assailed the order of the learned Single Judge 31.07.2018 passed in C.W.J.C. No. 8835 of 2017 to the extent that there is non-consideration of prayer No. 1 (ii) and (iii).

02. In C.W.J.C. No. 8835 of 2017, petitioner has sought for the following relief(s):-

“(i) To hold and declare that the action of the Respondent No. 1 in not making the payment of petitioner's salary for last 55



months i.e. w.e.f. the month of September 2012, in spite of petitioner's regular, continuous and satisfactory service, is highly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is violative of Article 14,16 & 21 of the Constitution of India.

AND CONSEQUENT UPON SUCH DECLARATION

(ii) A writ in the nature of Mandamus may kindly be issued, commanding the Respondent No. 1 to make the payment of petitioner's withheld salary from the month of Sept' 2012, that too, along with penal interest thereupon at least @ 12% per annum.

(iii) Issuance of an order / direction or a writ in the nature of Certiorari Quashing the orders issued by the Respondent No. 3 as contained in (i) Memo No. 179 dated 10.03.2017, (ii) Memo No. 293 dated 08.04.2017, (iii) Memo No. 332 dated 22.04.2017 and (iv) Memo No. 419 dated 20.05.2017, whereby and where under the petitioner has inter-alia been directed to vacate Staff Quarter No. 1 so allotted to the petitioner, failing which by the last order dated 20.05.2017, the petitioner has been threatened his forceful eviction from the said Staff Quarter No. 1, upon appointment of Magistrate for the said purpose.

AND CONSEQUENT UPON THE QUASHING OF THE SAID ORDERS AS CONTAINED IN ANNEXURE-1,2,3 & 4

(iv) A writ in the nature of mandamus may be issued by this Hon'ble Court, commanding the Respondent No. 1 & 3 not disturb the peaceful possession of the petitioner over Staff Quarter No. 1 situated in Mohalla - Gami Tola, Katihar, which has been lawfully allotted to him w.e.f. 05.10.2009, by the then Respondent No. 3 vide Memo No. 910 dated 15.06.2010.

(v) For grant of any other relief or reliefs to which the petitioner may be found to entitled



to in the facts and circumstance of this case.”

03. Learned Single Judge considered the prayer No. (i) and directed the concerned authority to make payment of salary to the petitioner within a period of four months from the date of receipt/production of copy of the order. However, the learned Single Judge has not considered prayer Nos. (ii) and (iii) insofar as non-consideration of prayer No. (ii) is concerned, one can draw inference that learned Single Judge has restricted only for payment of salary.

04. Learned counsel for the appellant submitted that he has addressed the argument, insofar as the prayer No. 3 also. Perusal of the order dated 31.07.2018 of learned Single Judge there is not even *iota* of reference insofar as addressing the argument on prayer No. (iii). Therefore, the same cannot be adjudicated in the L.P.A. in the absence of any order of the learned Single Judge. Accordingly, the appellant is permitted to file review insofar as prayer No. (iii) is concerned, in accordance with law.

05. The appellant has not been paid salary from time to time from the month of September 2012 till 15.02.2020 i.e after disposal of CWJC by the learned Single Judge dated 31.07.2018 passed in CWJC No. 8835 of 2017, arrears have



been paid. Further, we noticed that respondents have not preferred LPA against the order of the learned Single Judge dated 31.07.2019. Therefore, insofar as payment of salary to the appellant is concerned, it has attained finality.

06. Now, the question for consideration is whether appellant is entitled to interest on belated settlement of arrears of salary for the period from September 2012 to 15.02.2020, the date on which the arrears salary has been paid to the appellant?

07. It is to be noted that the cause of action accrued to the petitioner for the purpose of seeking salary was in the month of September 2012. On the other hand, he slept over the matter for about five years while filing CWJC No. 8835 of 2017 in the year 2017. In other words, for about five years the appellant has not taken any action to approach or invoke remedy before this Court. Therefore, the appellant is not entitled to interest on arrears of salary during the period from September 2012 till 28.06.2017 i.e. the date on which CWJC No. 8835 of 2017 was registered. However, he is entitled to interest at the rate of 8 % per annum for the arrears of salary from the month of July 2017 till 15.02.2020, since there is a delay on the part of the concerned-respondent in not disbursing the salary from time to time. The appellant is entitled to cumulative interest on belated



settlement of arrears of salary in the light of Apex Court decision in the case of *Vijay L. Mehrotra Vs. State of U.P. and Ors.*, reported in *(2001) 9 SCC 687*.

08. The concerned-Respondent is hereby directed to calculate cumulative interest and disburse the same within a period of three months from the date of receipt of this order, failing which, the appellant is entitled to L.P.A. litigation cost and it is quantified @ Rs. 25,000/-.

09. Accordingly, the L.P.A. stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2023
Transmission Date	NA

