

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9253 of 2020

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Mahendra Prasad Singh Son of Late Brajendra Pratap Singh Resident of
Village Garh Baruari Police Station- Supoul, District- Supoul.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Home Police Department, Government of Bihar, Patel Bhawan, Patna.
3. The Director General of Police (DGP) Patel Bhawan, Bihar, Patna.
4. The Additional Secretary Home Police Department, Patel Bhawan, Patna.
5. The Joint Secretary Home Police Department, Patel Bhawan, Patna.
6. The Inspector General of Police Special Branch, Patel Bhawan, Bihar, Patna.
7. The Superintendent of Police Special Branch, Patel Bhawan, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bharat Bhushan
For the Respondent/s : Mr. Sanjay Parasmani, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 23-02-2023 Heard learned counsel for the parties concerned.

2. The petitioner has filed the writ application challenging the letter dated 28.10.2019 issued by the Additional Secretary, Home Police Department, Patna annexed at Annexure-23, whereby the service period of the petitioner between 08.10.2018 to 16.01.2019 i.e. for 101 days has been treated to be absent from duty without charge. This period has been adjusted against earned leave of the petitioner.

3. The petitioner has also prayed for a direction to the respondents to pay earned leave of 100 days inasmuch as after



retirement of the petitioner on 31.01.2019, the leave encashment has been paid for a period of 200 days only.

4. The petitioner was posted as SDPO at Tarapur at the relevant point of time. Before Tarapur, the petitioner was posted as SDPO at BMP-12, Saharsa and was transferred to Sub-division, Tarapur *vide* notification No. 6978 dated 29.08.2017 (Annexure-2). He joined at Tarapur Sub-division on 01.09.2017.

5. While the petitioner was discharging his duties as SDPO, Tarapur, the petitioner was transferred from Tarapur Sub-division to Special Branch, Patna *vide* notification No. 8578 dated 29.09.2018. Aggrieved by the transfer order, the petitioner file a writ application before this Court in CWJC No. 19919 of 2018 (Annexure-7) and the Co-ordinate Bench of this Court *vide* order dated 11.10.2018 directed the respondent-State to file counter affidavit and passed an interim order that no coercive step would be taken against the petitioner.

6. The writ application was finally disposed *vide* order dated 06.11.2018 observing that the petitioner has to retire in a short period of time, accordingly, this Court directed the Joint Secretary, Government of Bihar that the petitioner should be allowed to function at Tarapur as S.D.P.O. till his retirement as



per the policy decision of the State Government and Shri. Ramesh Kumar should be adjusted at appropriate place.

7. During the pendency of the writ application, the petitioner was made to handover charge in favour of Shri. Ramesh Kumar, who was transferred to take charge as SDPO, Tarapur.

8. LPA preferred by the respondent-State against the order dated 06.11.2018 passed in CWJC No. 19919 of 2018 also got dismissed.

9. It was submitted on behalf of the State that necessary order has been passed for payment of retiral dues to the petitioner and the payment shall be made positively within a period of three months.

10. The only issue which requires consideration is payment of leave encashment for a period of 100 days.

11. At last, the petitioner submitted his joining in Special Branch, Patna on 17.01.2019 and retired from there on 31.01.2019. The Superintendent of Police, Special Branch *vide* its letter No. 13209 of 2019 dated 25.07.2019 (Annexure-20) informed the Director General of Police, Patna, Bihar with a recommendation that leave encashment amount for 300 days is payable to the petitioner and there was no objection with regard



to payment of leave encashment for 300 days.

12. After the letter of the S.P., Special Branch dated 25.07.2019, the Home Department came out with the impugned order in which the period between 08.10.2018 to 16.01.2019 has been treated to be absent from duty without charge and this period has been adjusted against the earned leave of the petitioner and accordingly, it has been said that the petitioner is entitled for leave encashment for 200 days only.

13. Learned counsel for the petitioner submits that the respondent authorities disobeyed the order passed by a Co-ordinate Bench of this Court in which a specific direction was issued that the petitioner should be allowed to function at Tarapur as SDPO till his retirement as per the policy decision of the State Government.

14. Further, under pressure, the petitioner had to submit his joining in the Special Branch, Patna on 17.01.2019. The impugned letter does not consider this aspect of the matter that the petitioner was there at Tarapur pursuant to the order passed by this Court and was not absent from his service in the eyes of law.

15. Accordingly, his submission is that the impugned order is completely arbitrary, unreasonable and malafide.



16. On the other hand, Mr. Sanjay Parasmani, learned counsel appearing for the State in opposition of the writ application submits that the petitioner was absent without charge for the aforesaid period between 08.10.2018 to 16.01.2019 and after adjusting the period spent by the petitioner without charge against the leave encashment the payment of leave encashment up to 200 days has been made by the authorities.

17. I have learned counsel for the parties and have gone through the materials on record.

18. From perusal of the order passed by the Co-ordinate Bench of this Court at Annexure-10 dated 06.11.2018, it appears that this Court while deciding the writ application filed by the petitioner challenging his transfer order has specifically held that the petitioner has to retire in a short span of time and accordingly, directed the Joint Secretary, Government of Bihar that the petitioner should be allowed to function at Tarapur as SDPO till his retirement.

19. In my considered opinion, the impugned order is in teeth of the order passed by this Court in the writ application being CWJC No. 19919/2018. Accordingly, the petitioner cannot be treated to be absent from his duty for the period



between 08.10.2018 to 16.01.2019.

20. In the result, this application is allowed and order dated 28.10.2019 (Annexure-23) is set aside. Respondent nos. 2, 3 and 4 are directed to make payment of 100 days of leave encashment to the petitioner within a period of two months from the date of receipt/production of copy of this order.

21. With the aforesaid observation and direction, this writ application is disposed.

(Anil Kumar Sinha, J)

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