

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.905 of 2017

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Kailash Prasad Singh son of Late Siyaram Singh resident of village - Banta,
P.S. Hayaghat, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The D.I.G. of Police, Darbhanga Range, Darbhanga.
4. The Seior S.P., Darbhanga.
5. The Accountant General A and E, Bihar, Patna.
6. The Senior Accounts Officer, Office of Accountant General A and E, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Hriday Prasad, Advocate
For the Respondent/s	:	Mr.Saroj Kumar, AC to AAG 4
For the AG Bihar	:	Mr.Ram Kinkar Chaubey, Advocate
For the Vigilance	:	Mr.Arvind Kumar, Advocete

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-03-2023

Heard Mr. Ram Hriday Prasad, learned counsel appearing on behalf of the petitioner, Mr. Saroj Kumar, learned AC to AAG 4 appearing for the Respondents, Mr. Ram Kinkar Chaubey, learned counsel appearing for the AG Bihar and Mr. Arind Kumar, learned counsel appearing for the Vigilance.

2. Learned counsel appearing on behalf of the petitioner seeks for quashing of order dated 20.07.2016 passed by the Senior S.P., Darbhanga (Annexure P-6), by which the period of discharge i.e. from 06.02.1995 to 22.03.2011 has not been counted for the



purpose of pension and gratuity of the petitioner and he further seeks to quash the order of the Senior Accounts Officer, Office of the Accountant General (A & E) Bihar, Patna dated 14.12.2016 (**Annexure P-9**) by which amount of admissible Death-cum-Retirement Gratuity (DCRG) has been shown as Rs.4,93,312/- in place of Rs.7,94,112/-.

3. The petitioner has relied upon **paragraph no.36** of the Hon'ble Division Bench judgment (Coram : I.A. Ansari & Samarendra Pratap Singh, JJ) in the case of **Bihar State Financial Corporation Vs. The State of Bihar & Ors.**), reported in **2014 (2) PLJR 745**, which is reproduced hereinafter :

“However, the principle, relating to bank wages being payable on illegal re-entrenchment/termination, may have no application, where the termination (dismissal), removal or compulsory retirement is by way of punishment for misconduct in a departmental inquiry and the Court confirms the finding regarding the misconduct, but only interferes with the punishment on the ground that it is excessive and, thus, reduces the punishment resulting into reinstatement of an employee. In these cases, the Court, in effect, is not holding that the employer was not the wrong and that the delinquent had not acted in a manner unbecoming of an employee. In such circumstances, the Court can either direct reinstatement or make a direction for nominal *lump sum* compensation and where continuity is directed, it may be only for the purposes of expansionary or retiral benefits and not for other benefits like increment or promotion.”



4. Learned counsel appearing on behalf of the respondents submits that it is admitted that the petitioner was discharged from performing his duty w.e.f. 06.02.1995 to 22.03.2011 and the same has not been counted for the purpose of pension and gratuity of the petitioner, in terms of the settled principle of law that where an employee is kept away from performing his duty by the employer, the petitioner is not liable for such relief. Learned counsel for the respondents further submitted that such action has been taken against the petitioner in view of the circular of the Finance Department bearing memo no.3014(b) dated 31.07.1080 .

5. In the present case, the petitioner has not performed his duty for the aforesaid period, as such he is not liable for the period to be counted for the purpose of fixing of his pension and gratuity.

6. The main question of law involved for consideration in this writ petition is that whether the period from 06.02.1995 to 22.03.2011, during which the petitioner was dismissed from service, has to be counted for the purpose of gratuity and pension of the petitioner or not ?

7. The law is well settled as on date that principle of no work, no pay will apply only when the employee has been found



to have absented from his duty without any rhyme or reason, however, in such cases, where the employee is prevented from performing his duty by his employer, the Hon'ble Apex Court has held that action of the respondent authority in not counting the period for the purpose of fixation of the pension has been deprecated. Reference can be taken of the case reported in **2013 (7) SCC 595 and 2022 (11) SCC 794**, wherein the Apex Court has held that where the employee is not at fault and is kept out of work because of employer's decision, he/she cannot be denied back wages.

8. The Hon'ble Apex Court in the case of **Gurptit Singh vs. State of Punjab & Ors.** reported in **2002 (9) SCC 492**, in similar circumstances, while allowing the appeal has observed as follows : -

“We failed to understand how the continuity of service could be denied once the plaintiff was directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment but it is a case of reinstatement.”

9. In the present case, the petitioner has been reinstated and he assumes his status restored as was prevailing prior to order of his dismissal and as such he is entitled for the benefit of



continuity of his service with effect from the date of his initial appointment.

10. Merely, by way of mentioning that reinstatement was with respect to date of his joining would not be sufficient to take away the right of the petitioner to claim his continuity from his initial date of appointment.

11. Accordingly, Annexue nos.6 and 9 are hereby quashed and respondents are directed to re-fix the pension of the petitioner treating his service w.e.f. 22.7.1979 (the date of his appointment as constable in the district of Madhubani). The respondents are further directed to recalculate and re-fix the pension of the petitioner within a period of eight weeks from the date of receipt/ production of a copy of the order of this Court.

12. Accordingly, the writ petition stands allowed.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	27.03.2023
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