

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.490 of 2018

In
Civil Writ Jurisdiction Case No.21374 of 2011

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Shwetambar Nath Dubey S/o Late Baidyanath Dubey, R/o Village-Pawani,
P.S. Muffasil Buxar, District Buxar a Present Retired Accounts Clerk,
Irrigation Mechanical Division, Dehri, District-Rohtas.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Accountant General, Bihar, Birchand Patel Road, Patna.
3. The Principal Secretary, Water Resource Department, Irrigation Building, Patna.
4. The Under Secretary, Water Resource Department, Water Resource Department, Irrigation Building, Patna.
5. The Chief Engineer, Water Resource Department, Dehri, Rohtas.
6. The Superintending Engineer, Irrigation Mechanical Circle, Gaya.
7. The Executive Engineer, Irrigation Mechanical Division, Dehri, Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bishnu Kant Dubey, Advocate Mr. Sunil Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4 Mr. Alok Kumar Rahi, AC to AAG-4 Mr. Utkarsh Bhushan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-07-2023

A Work Charge employee, who was regularized and then reverted, claims for pension treating the entire period of absence from Work Charge Establishment as duty. The learned Single Judge declined the prayer finding that the petitioner had voluntarily kept himself away from duty and had,



thus, disentitled himself from the claims in the writ petition.

2. We heard the learned counsel for the petitioner and the learned Additional Advocate General-4, Mr. Anjani Kumar for the respondents.

3. The learned counsel for the appellant relied on **Parshotam Lal Dhingra v. Union of India** reported in **AIR 1958 SC 36** to contend that if there is a misconduct, there should have been an enquiry conducted and the services terminated. In the present case, there was absolutely no termination of service and, in such circumstances, the petitioner is entitled to pension as on the date of his superannuation treating the entire period from the date of his original appointment as his pensionable period of service. Reliance is also placed on **Sushila Devi v. State of Bihar** reported in **2001 (3) PLJR 295** wherein Rule 58 allowing termination without an enquiry on the ground of unauthorised absence was set aside as *ultra vires*. The learned AAG-4, on the other hand, submits that the petitioner had abandoned the employment and, hence, he was granted pension only treating the period he worked in the Work Charge Establishment as his pensionable service.

4. The facts indicate that the appellant was appointed as a Work Charge Chowkidar on 15.03.1973 along



with others. Later, he was adjusted on the permanent post of Accounts Clerk on 12.10.1981. It was realized that the said adjustment was an illegality and by order dated 12.02.1998 he was reverted to his original Class-IV post in the Work Charge Establishment. The reasoning was also that a Work Charge Employee cannot be adjusted on regular Grade-III post. The petitioner moved C.W.J.C. No. 1936 of 1998, in which there was a remand, in which the reversion was directed to be considered afresh by the authorities. A further writ petition was filed as C.W.J.C. No. 10366 of 2003, claiming that in similarly situated cases the Government had favourably considered regularization. The said writ petition was also disposed of directing the representation to be considered. The appellant however remained absent after his reversion from 30.07.1998.

5. The appellant filed a representation pursuant to the order in the C.W.J.C. and the authorities decided on 12.01.2010 to allow the appellant to join. The appellant claimed that he submitted his joining on 27.01.2010 but the respondents disputed the said fact and asserted that the appellant had merely sent a joining through post, which was received on 11.02.2010. The appellant was, thus, issued a show-cause as to why he should not be dismissed from service to which he submitted a



reply. While so, the appellant attained the age of superannuation on 31.01.2011, hence the proceedings for dismissal was not continued and he was paid retiral dues till the time he was in actual service i.e. 30.07.1998.

6. It is very pertinent that the appellant having been reverted to the work charge establishment absented himself from duty and discontinued his employment. True, he had challenged the reversion before Court, but that does not absolve him from continuing in duty, in the reverted post. Only if he continued in the reverted post can he maintain a successful challenge against the reversion. The writ petitions filed by him against the reversion were directed to be considered by the authorities. The latest order of this Court dated 2004 was complied by the authorities only in the year 2010, but the appellant continued his absence from duty. Clearly, the same is an abandonment of employment.

7. The appellant contended that since he was engaged in litigation he did not join for duty. Even during the pendency of the litigation there was nothing preventing him from joining for duty and only then he could have reaped the fruits of the litigation. On a specific query made by the learned Single Judge, the appellant had admitted his absence from duty



but explained it on untenable grounds, as noticed above.

8. The next contention is with respect to the appellant having attempted to join employment on 27.01.2010 and on the Executive Engineer having refused to permit him, the communication having been addressed by post which is said to have been received on 11.02.2010 at the Establishment. The appellant, however, did not raise any such grievance, of refusal of permission to join before Court in the year 2010. The appellant has been litigating consistently regarding his reversion and if there was any refusal by the concerned authority in permitting him to join; he would have definitely approached this Court.

9. We have to presume that only considering the fact that his date of superannuation was approaching, the appellant failed to join so as to raise the contention of deemed continuance and retiral benefits as on the date of superannuation. The learned Single Judge found that while approaching this Court under Article 226, the litigant has to come with clean hands. We perfectly agree with the finding and discern no reason to interfere with the judgment passed.

10. The appellant has been granted retiral benefits based on his actual service till 30.07.1998. After that,



admittedly, he did not join duty in the reverted post and the challenge raised in the appropriate court against the reversion is not a valid ground for not joining the reverted post and continuing thereon. The appellant is deemed to have abandoned his employment.

11. The Letters Patent Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

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