

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1381 of 2018

In
Civil Writ Jurisdiction Case No.8913 of 2008

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1. The State Of Bihar through the Principal Secretary, Water Resources Department, Sanchai Bhawan, Patna
 2. The Under Secretary, Water Resources Department, Sanchai Bhawan, Patna.
 3. The Executive Engineer, Sone High Level Canal Division, Bhabua.
 4. Personnel Grievances Fixation Cell, Finance Department, Government of Bihar.
 5. The Accountant General, Bihar, Patna.
 6. District Provident Officer, Rohtas.

... .. Appellant/s

Versus

Kripa Shankar Singh, Son of Late Suraj Prasad Singh, resident of Village and P.O. - Mokari, P.S. - Bhaba, District – Kaimur, Bhabua

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sudish Kumar, AC to PAAG 2
Mr. Ajeet Kumar, GA 9
For the Respondent/s : Mr. Ranjay Kumar Patel, Advocate
Mr. Prabhakar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 12-12-2022

The present appeal has been filed by the State against the order of learned Single Judge dated 24.04.2018 passed in C.W.J.C. No. 8913 of 2008. The respondent – Kripa Shankar Singh in his writ application has prayed for the following relief/reliefs:



“(i) For direction against part of the order [Clause 2] dated 21.05.2002, by which while regularising the service period of the petitioner, covering the period from 01.06.1982 to 31.12.1986, the respondents have illegally treated the period from 21.10.1982 to 28.12.1986 as dues leave and illegally adjusted the said period as leave period without treating the same as waiting for posting; and to direct the respondents to treat the total period of 01.06.1982 to 31.12.1986 as waiting for posting and to regularise arrears of salary, increments, etc. in accordance with law for which the petitioner is legally entitled for.

(ii) For direction upon the respondents to fix the increments against the post of Assistant Engineer and to release the arrears of the same in accordance with law.

(iii) To release the arrears of salary after giving effect the notification dated 25.06.2003, which has been made effective from 09.08.1999, under the ACP Scheme for which the petitioner is legally entitled for.”

2. The learned Single Judge allowed the writ application on 24.04.2018. Hence the present L.P.A.

3. Learned counsel for the appellant - State submitted that for having not discharged his duties in the post of Assistant Engineer by the respondent, he is not entitled to regulate the period from 20.10.1982 to 29.12.1986. The learned Single Judge has not appreciated the conduct of the respondent.

4. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and supported the order of the



learned Single Judge stating that he was awaiting for posting since 24.05.1982. Initially he was posted at Siwan where the post was not available. Thereafter, appellants have taken five months to give fresh posting at Waterways Circle, Ranchi on 20.10.1982 and the same was not communicated to the respondent. Thereafter, appellants' have issued a fresh posting order on 29.12.1986 in the office of the Chief Engineer, Planning and Monitoring Division, Patna, therefore, there is no fault on the respondent's part.

5. Heard learned counsels for the respective parties.

6. There is a serious lapse on the part of the appellants in not taking timely action like providing posting order to the respondent against a vacant post. On the other hand, initially he was posted at Siwan in the absence of vacant post. Thereafter, on 20.10.1982 posting was given at Waterways Circle, Ranchi and it was not communicated to the respondent. Even assuming that it was communicated or not communicated, there is total inaction on the part of the appellants in not taking any action against respondent in placing him under suspension followed by disciplinary proceedings in disobeying the order of transfer dated 20.10.1982 or in the alternative for remaining unauthorized absent, the aforesaid action should have been taken. Even to this day there is no action on the part of the appellant either in initiating inquiry



for alleged unauthorized absent. In view of these lacunae on the part of the appellants, appellants have not made out a case so as to interfere with the order of learned Single Judge dated 24.04.2018 passed in C.W.J.C. No. 8913 of 2008. Accordingly, present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

GAURAV S./-

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CAV DATE	
Uploading Date	15.12.2022
Transmission Date	

