

Md. Halim Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-28-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : Service Laws

Appeal No. : L.P.A. No. 344 of 2003

Appellant : Md. Halim

Respondent : The State of Bihar and ors.

Advocate for Def. : S.S. Naiyer Hussain, G.P. 2

Advocate for Pet/Ap. : Md. Kamran, Adv.

Disposition : Petition dismissed

Judgement :

Ravi S. Dhavan, C.J. and R.N. Prasad, J.

1. The delay is condoned.

2. As the writ petition was sans details, the learned Judge dismissed the writ petition with the following order:

'Heard Mr. Md. Kamran for the petitioner, learned junior counsel to Government pleader No. II, and Mr. A.K. Jha for the Accountant General, Bihar, Patna. According to the writ petition, the petitioner was appointed as an Extra clerk by the Department of Registration on 17-3-1961 (Annexure-1). He was thereafter made a temporary clerk by order dated 16-1-1981 (Annexure-2). He was finally made permanent clerk in the Department of Registration vide order dated 13-1-1999 (Annexure-2/A), It is further stated in the writ petition that he superannuated from the services of the Bihar Government with effect from 30-11-1999, while working as permanent clerk. The petitioner complains before this Court that his post-retirement benefits have been fixed on the basis of the service rendered by him from 16-1-1981 to 30-11-1999, and is being deprived of the benefits of service from 17-3-1961 to 16-1-1981.

2. I have perused the writ petition and considered the submissions of learned counsel for the petitioner. In spite of repeated queries, learned counsel for the petitioner is not able to satisfy this Court that he has been deprived of the benefits of service for the period 17-3-1961 to 16-1-1981. The requisite foundational facts have not been laid in the writ petition, and does not disclose a cause of action. The same is dismissed.'

3. The petitioner accepts that he was engaged as an Extra clerk, according to him, in 1961, This is his contention that he became a temporary clerk in 1981, The petitioner worked at the Registration office, the Court is given to understand, for copying out documents which are put up for registration. When the petitioner retired on 30 November, 1999, his pension was reckoned from the date from which he became a temporary clerk until his date of retirement, i.e., the period between 1961 to 1981.

4. Counsel for the petitioner desires that the High Court notices certain orders of the High Court by which pension has been provided to similarly situated persons. Learned counsel appearing on behalf of the State Mr. S.S. Naiyer Hussain, Senior Advocate, submits that no details worth the name has been given and each case, for the purpose of responsibility, has to be examined by the State on its own facts and circumstances. It is contended that the very judgment which the petitioner

appears to rely upon in re Upendra Prasad v. State of Bihar, 1995(2) PLJR 822, cannot be utilised by the petitioner in a vacuum. Paragraph 15 refers to a stated case that continuous service has been discharged. On this when the Court inquired from learned counsel for the appellant as to what is the record on continuous service between 1961 to 1981, it was candidly admitted before the Court that this record has not been shown in the writ petition. Continuous service has to be pleaded, claimed and proved. For the askance, a relief cannot be given.

5. In the circumstances, the petitioner has not been able to make out a case that he had discharged continuous service so as to count that period in addition to the period on which he has been granted pension.

6. In the circumstances, the Court cannot certify that the learned Judge has committed any error in dismissing the writ petition.

7. Dismissed.

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