

Surya Narayan Prasad Vs the State of Bihar and ors

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Court : Patna

Decided On : May-12-2011

Judge : Mridula Mishra, J.

Acts : [Constitution of India](#) - Articles 226,

Appeal No. : CIVIL WRIT JURISDICTION CASE No.9500 OF 1997

Appellant : Surya Narayan Prasad

Respondent : The State of Bihar and ors

Judgement :

1.Petitioner has made prayer for granting several relief:- (i) To regularize his services for the period 1.8.1969 to 29.1.1970 (ii) To make payment of salary for the period between 1.8.1969 to 29.1.1970 which has been treated as break in service. (iii) To fix pay on higher scale and then make payment of difference of arrears of salary since 1.8.1969 and also to give him time bound promotion as well as to promote him to the post of Foreman as it has been given to the similarly situated employees.

2.Petitioner was initially appointed on the post of Welder Instructor on 4.7.1960 under the 2scheme Model Blacksmith at Pusa Road under the district of Darbhanga. Subsequently by the order dated 2.4.1965 issued by the Deputy Director, Technical Education, Government of Bihar, Patna, he was appointed on the post of Workshop Instructor in the Welding trade under the State Government

at Junior Technical School, Muzaffarpur. Petitioner was appointed along with other persons. The State Government decided to abolish the junior Technical Schools situated at Patna, Muzaffarpur and Koderma with effect from 1.1.1969. Petitioner and two other persons who were working in Junior Technical School, they were also going to be terminated with effect from 1.1.1969. However, they continued till 1.8.1969, on account of some stay order and injunction order passed in cases preferred by similarly situated employees of the Junior Technical School. Service of the petitioner was terminated with effect from 1.8.1969. He was again appointed on the post of Junior Instructor at Mining Institute, Koderma in the same pay scale. He joined on 30.1.1970. However, the period in between 1.8.1969 to 29.1.1970 was not treated as regular service. Six months period was treated as break in service.

3. Petitioner's grievance is that on several occasions, he represented before the authorities. Subsequently vide order dated 18.7.1997 contained in memo no. 1863, the Joint Secretary passed an order, whereby the period in between 1.8.1969 to 29.1.1970 was considered as pensionable service but still it was treated as break in service period.

4. Counsel for the petitioner submits that on account of this break in service, he has been deprived from promotion, increment, fixation of salary in higher scale as well time bound promotion. It has also been submitted that other two persons who were also terminated in similar matter and subsequently appointed like the petitioner, were given all such benefits. Three persons have been named as Kameshwar Prasad Sinha and Sukhdeo Prasad Yadav, who were given benefit of continuity in service .

5. In Para 5 of the counter affidavit, filed on behalf of the respondents, there is an admission that some employees of J.T.S., whose service period was treated as break in service, was regularized, and the period was treated as period waiting for posting. But so far petitioner is concerned; he was not given this benefit as the Finance Department did not approve it. No reason has been assigned for treating the case of the petitioner differently than others, whose period of break in service has been regularized. In the counter affidavit, it has also been admitted that

Kameshwar Prasad Sinha and S.P. Yadav, who were posted as Senior Instructor in Government Polytechnic, Dumka and Patna has also been regularized. So far petitioner is concerned, it has been stated that he was given annual increment after joining at Mining Institute.

6. On consideration of the pleading of the parties and there being no specific reason in the counter affidavit for denying the petitioner such benefits, which have already been allowed in the case of Kameshwar Prasad Singh and S.P. Yadav, though similarly situated. This application is being allowed, directing the respondents to treat the period in between 1.8.1969 to 29.1.1970 as continuous service for giving all benefits to the petitioner. Petitioner will be paid his due salary for this period. It will not be treated as break in service. Petitioner will also be allowed second time bound promotion, considering his initial appointment with effect from 1.8.1969. The promotion given to Kameshwar Prasad Singh and S.P. Yadav to the post of Foreman, shall also be given to the petitioner. He will be entitled for all benefits financial and others, on account of giving time bound promotion as well as promotion to the post of Foreman. Respondents are directed to reconsider the case of the petitioner for all this purpose and pass necessary order within twelve weeks from the date of receipt/production of a copy of this order. Petitioner should be allowed similar benefits, as it has been allowed in case of Kameshwar Prasad Sinha and S.P. Yadav.

7. This writ application is accordingly allowed.

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