

STATE OF BIHAR AND OTHERS
v.
KRIPA NAND SINGH AND ANOTHER
(Civil Appeal No. 6692 of 2014)

JULY 23, 2014

[MADAN B. LOKUR AND KURIAN JOSEPH, JJ.]

Service Law:

'No work, no pay' - Appointment - Appointee not able to join as per appointment letter, since he was not permitted to join - Appointee did not bring this fact to the notice of higher authorities - After five years joined the duty - After 10 years of service, approached the Court seeking payment of salary for the period, he had not worked - Courts below granted the claim - On appeal, held: 'No work, no pay' is the rule and 'no work, yet pay' is the exception - Compulsory waiting period comes under exception, if the claimant establishes that despite earnest endeavours, he was not able to join the duty - Voluntary waiting period is not covered by exception - In the present case, the claimant failed to show that he made earnest endeavour to join the duty, once he was refused to join the duty - Hence, the period from the date of refusal to join, till the date of his joining the duty, cannot be said to be compulsory waiting period - Hence the appointee not entitled for the salary for that period.

Respondent was appointed as a teacher of Political Science. He was asked to report to a particular school for joining the duty within a period of 21 days from the date of appointment letter i.e. 5.2.1986. The respondent reported for the duty within stipulated time i.e. on 24.2.1986, but was not allowed to join, on the ground that there already existed the teacher for political science. He joined duty after five years on 17.2.1991 after receiving a

A letter from the Department. After ten years of his joining the duty, he filed writ petition claiming salary for the period from 24.2.1986 to 16.7.1991. The claim was allowed by courts below. Hence the present appeal by the State.

B Allowing the appeal, the Court

C HELD: 1. 'No work, no pay', is the rule and 'no work, yet pay', is the exception. Compulsory waiting period is one such exception. But to qualify for the exception, an employee has to establish that he had made earnest endeavors and yet that he was not able to join duty for no fault on his part. He must also show his earnestness to join duty. Voluntary waiting period is not covered by the exception. [Para 2] [307-F]

D 2. It is not a case of transfer as wrongly noted by the Division Bench. It is a case of first appointment. The first respondent had not joined duty in the school as per the letter of appointment. True, the Headmaster of the school had not accepted the joining but the first respondent had necessarily to bring the matter to the higher authorities since he was to join duty as per his order of appointment within 21 days of the issuance of the appointment letter dated 05.02.1986. There is no whisper either in the writ petitions or in the counter affidavit before this Court that the first respondent made any serious attempt before any authority seeking permission to join duty in any other school. It becomes difficult to believe that for five years, he was waiting for an order to join duty in school where there is vacancy. In case, the appointee could not join duty in the first place of posting, he should have brought the matter to the notice of the higher authorities and sought for a posting in any other place, so as to save his appointment. Nothing of that sort was done by the first respondent. He waited till 1991 till he got a Memo dated 17.07.1991. [Para 8] [309-E-H; 310-A-B]

H

2. The conduct of the respondent shows that he was at fault. He waited for five years to get another posting. He had not made any representation during the said period for joining duty in any other place. His writ petition itself is after ten years of his joining duty at a place apparently of his choice. Though the order is dated 05.02.1986, he had joined duty only on 17.07.1991. In such circumstances, it cannot be said that the period between 24.02.1986 to 16.07.1991 is to be treated as a compulsory waiting period. It is in fact a voluntary waiting period. [Para 9] [310-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6692 of 2014

From the Judgment and Order dated 14.09.2009 in LPA No. 1061/2009 of the High Court of Patna.

Gopal Singh and Manish Kumar for the Appellants.

S.K. Sinha, Sushma Suri, Tapesh Kumar, Bimlesh Kr. Singh for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J.: 1. Leave granted.

2. 'No work, no pay', is the rule and 'no work, yet pay', is the exception. Compulsory waiting period is one such exception. But to qualify for the exception, an employee has to establish that he had made earnest endeavors and yet that he was not able to join duty for no fault on his part. He must also show his earnestness to join duty. Voluntary waiting period is not covered by the exception.

3. First respondent was appointed Teacher in political science as per Memo No. 400-548 dated 05.02.1986 and he was directed to join the High School, Kisko, Lohardagga within 21 days. He reported for duty on 24.02.1986. However, his appointment order was returned by the Headmaster with the endorsement as under:

A "According to the memo no. 400-548 dated 5th February, 1986 Shri Kripanand Singh (Assistant Teacher) has been appointed in Political Science subject issued by the Deputy Director of Education Secondary, Budhmarg, Patna.

B In this School already Teachers in Political Science and History subjects are working. In this school there is only one vacant post of Hindi subject.

Therefore, it is not possible to accept joining of him in this School."

C 4. After five years, by Memo No. 1736-79 dated 17.07.1991 issued by Deputy Director Education, Patna, first respondent was posted in the High School Sahjadpur (Madhepura). However, there also, there was no vacant post.

D Therefore, by Memo No. 333-6 dated 24.07.1991 issued by Additional Director of Education, Darbhanga and Kosi Division, first respondent was directed to join in the High School Balwahat (Sarharsa).

E 5. After ten years of his joining duty, first respondent filed Writ Petition CWJC No. 16087 of 2001 before the High Court of Judicature at Patna for payment of salary for the period 24.02.1986 to 16.07.1991. The said Writ Petition was disposed of with a direction to make a fresh representation. It was made clear in the order that:

F "In case the petition was unable to join due to defective orders of posting and in case he was not at fault for not being able to join any post during the period in question. there should be no reason to deny him the salary for the mistakes committed by the department officials."

G (Emphasis supplied)

H 6. The representation was turned down by Order dated 21.09.2002. That was challenged in Writ Petition CWJC No. 126 of 2003 leading to Judgment dated 03.03.2009. The learned Single Judge took the view that the Government had

not passed proper order as per the directions issued by the court. It was further held that the rejection of the claim for salary for the period 24.02.1986 to 16.07.1991 was not explained in the counter affidavit. According to the learned Single Judge, the Headmaster, having not permitted the first respondent to join duty on account of non-availability of vacant post and posting having been made thereafter only in 1991, pursuant to which he joined duty on 17.07.1991, first respondent is entitled to salary for the period 24.02.1986 to 16.07.1991. The judgment of the learned Single Judge was challenged before the High Court. The Division Bench dismissed the appeal by a cryptic order, which reads as follows:

"... the learned single judge has rightly issued direction of payment of salary to the respondents. As concluded by the learned single judge, the writ petitioner was not able to join on account of defect in the order of transfer and not on account of his own."

7. Heard the learned counsel appearing for the State and the counsel appearing for the respondents.

8. At the outset, it has to be noticed that it is not a case of transfer as wrongly noted by the Division Bench. It is a case of first appointment. It is significant to note that the first respondent had not joined duty in the school as per the letter of appointment at Kisko, Lohardagga. True, the Headmaster of the school had not accepted the joining but the first respondent had necessarily to bring the matter to the higher authorities since he was to join duty as per his order of appointment within 21 days of the issuance of the appointment letter dated 05.02.1986. There is no whisper either in the writ petitions or in the counter affidavit before this Court that the first respondent made any serious attempt before any authority seeking permission to join duty in any other school. It becomes difficult to believe that for five years, he was waiting for an order to join duty in school where there is vacancy. As we have already observed above, it is not a case of an employee being transferred from one place to

A another. It is a case of fresh appointment. In case, the appointee could not join duty in the first place of posting, he should have brought the matter to the notice of the higher authorities and sought for a posting in any other place, so as to save his appointment. Nothing of that sort was done by the first
 B respondent. He waited till 1991 till he got a Memo dated 17.07.1991. As noted by the Additional Director in letter dated 24.07.1991:

C "Shri Singh had joined on 17.7.1991 in pursuance of the departmental order in High School Sahajadpur (Madhepura). In these circumstances Shri Singh salary from 17.7.1991 to the date of joining in the newly posting school, taking that to be waiting period will be made by the Apurb High School Balwahat Saharsa."

D (Emphasis supplied)

E 9. In the Judgment dated 31.01.2002, the first round of litigation in CWJC 16087 of 2001, the High Court had made it clear that his entitlement for salary for the period between 24.02.1986 to 16.07.1991 would depend on whether he was
 F at fault or not to in joining any post during the period in question. His conduct speaks volumes to show that he was at fault. He waited for five years to get another posting. He had not made any representation during the said period for joining duty in any other place. His writ petition itself is after ten years of his joining
 G duty at a place apparently of his choice. Though the order is dated 05.02.1986, he had joined duty only on 17.07.1991. In such circumstances, it cannot be said that the period between 24.02.1986 to 16.07.1991 is to be treated as a compulsory waiting period. It is in fact a voluntary waiting period.

G 10. Accordingly, we allow the appeal. The impugned order is set aside. The Writ Petition CWJC No. 126 of 2003 on the files of the High Court of Judicature at Patna is dismissed.

11. There is no order as to costs.