

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12697 of 2008

- =====
1. Krishna Kumar Sinha S/o Late Ram Sewak Prasad R/o Moh. Telbigha, Deputy Compound, P.S. Kotwali, District – Gaya.
 2. Binod Kumar Singh, S/o Sri Sachidanand Singh, R/o Vill. Pauthu, P.S. Jamhour, District – Aurangabad.
 3. Gurucharan Mochi, S/o Late Parmeshwar Mochi, R/o Vill. Maghrour, P.S. Guraru, District Gaya.
 4. Sadhu Sharan Prasad, S/o Rameshwar Prasad, R/o Vill. Bhawalpur Bhalua, P.S. Belaganj, District – Gaya.
 5. Md. Sharf Alam Khan, S/o Abdul Ahaj Khan, R/o Vill. Bantara, P.S. Deokund, District Aurangabad.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Environment and Forest Department, Government of Bihar, Old Secretariat, Bailey Road, Patna.
2. The Principal Secretary, Environment and Forest Department, Government of Bihar, Old Secretariat, Bailey Road, Patna.
3. The Deputy Secretary, Environment and Forest Department, Government of Bihar, Old Secretariat, Bailey Road, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Acting Deputy Secretary, Division – III, Department of Finance, Government of Bihar, Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Pratik Kumar Sinha
Mr. Ajay
For the Respondent/s : AC to GA-13

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 02-09-2015 Heard Sri Pratik Kumar Sinha, learned counsel, who was instructed by Sri Ajay, learned counsel for petitioners to argue on behalf of petitioners and learned A.C. to Govt. Advocate – 13.

Five petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an order, contained in Memo No. 3026 dated 14-11-2006, passed by the Deputy Secretary, Environment and



Forest Department, Govt. of Bihar, Patna (**Annexure – 6** to the writ petition), whereby the period of absence of the petitioner due to dismissal has been regularized and it has been treated as dies-non. It has further been clarified that period of absence may not be termed as break in service.

Short fact of the case is that petitioners, who were appointed long back, were directed to be removed on the ground that their appointments were illegal. Subsequently, petitioners assailed the said order by filing a writ petition, vide C.W.J.C. No. 8983 of 2004. After hearing the parties, the writ court by its order dated 01-08-2005 allowed the writ petition and quashed the impugned order i.e. order contained in Memo No. 2106 dated 19-07-2004. Copy of the said order i.e. Memo No. 2106 dated 19-07-2004 has been brought on record as **Annexure – 1** to the present writ petition. On perusal of the **Annexure – 1**, it is evident that it was a communication made by the Deputy Secretary to the Government, Environment & Forest Department, Govt. of Bihar, whereby it was indicated that appointments of petitioners were illegal. Ofcourse, no separate order of termination was brought on record, but the Single Bench of this Court had quashed the Memo No. 2106 dated 19-07-2004. Besides quashing memo dated 19-07-2004, this Court also quashed the consequential orders. In compliance with the order of

the writ court dated 01-08-2005, the petitioners were re-instated. However, since for some period, the petitioners remained absent from the duty, by memo no. 3026 dated 14-11-2006, the period of absence has been regularized. There is no complaint that after the order of the writ court, petitioners were denied their reinstatement, rather they have been reinstated.

Mr. Sinha, learned counsel for petitioners has assailed memo no. 3026 dated 14-11-2006 (**Annexure – 6** to the present writ petition) on the plea that once order of termination was quashed, the petitioners were entitled to get all the benefits, including the salary for the period, for which, petitioners were restrained from functioning. In support of his submission, learned counsel for petitioners has placed reliance on a recent judgment of the Apex Court, reported in **2015 (1) P.L.J.R. (SC) 145 (Raghubir Singh – Vs. – General Manager, Haryana Roadways, Hissar)**. He has specifically referred to paragraphs 39 and 40 of the judgment to substantiate that in case of reinstatement, back-wages is condition precedent. On aforesaid ground, by way of making a prayer for setting aside **Annexure – 6**, he makes a prayer for directing the respondents to pay all the pecuniary benefits to the petitioners during the period, for which, petitioners remained absent from service due to the order of termination.



Learned State counsel has opposed the prayer of petitioners. By way of referring to the counter affidavit, he submits that decision, vide **Annexure – 6** was taken for regularizing the period, during which, petitioners remained absent. The period between the date of termination of service of the petitioners and date on which they were reinstated in service was not to be taken, as break in service, but for the said period, payment of salary and other allowance shall not be made. He further submits that in view of **Annexure – 6**, the said period of absence shall be counted for all other purposes. He further submits that the judgment on which petitioners have placed reliance may not render any help to the petitioners in view of facts of the present case.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Once by order dated 01-08-2005 passed in C.W.J.C. No. 8983 of 2004, this Court had set aside the order of termination and directed for reinstatement, without specifying for back-wages, at this juncture, this Court may not act as an appellate court to the same order. This Court may not travel beyond the direction given by the coordinate Bench of this Court.

So far as judgment of the Apex Court i.e. **Raghubir Singh's case** (*supra*) is concerned, that case was entirely on

different footing. In the said case, dispute under the Industrial Dispute Act was raised. Firstly, the Labour Court passed order for reinstatement with 60% back-wages, however; the order of the Labour Court was set aside by a Single Bench, which was affirmed by Division Bench in L.P.A. Subsequently, the matter travelled to the Apex Court and the Apex Court, in view of facts and circumstances of the said case, directed for reinstatement with back-wages.

Fact remains that principle of 'No Work No Pay' would be applicable in the present case. Moreover, in view of the fact that while passing order for reinstatement, by its order dated 01-08-2005 passed in C.W.J.C. No. 8983 of 2004, the coordinate bench had not issued any direction for back wages, this Court may not supplement the earlier direction.

Accordingly, I do not find any ground to pass any positive order in favour of petitioners.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

U			
---	--	--	--