

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 566 of 2012

IN

Civil Writ Jurisdiction Case No 7825 of 1997

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Awadhesh Kumar Shrivastava S/O Late Hari Shankar Prasad Shrivastava R/O
Village & P.O.- Barheya, P.S.- Ziradei, District- Siwan

.... Appellant/s

Versus

1. Bihar State Food and Civil Supplies Corporation Ltd Through Its Managing Director Birchand Patel Marg, Sone Bhawan, Fifth Floor, Patna, P.S.- Sachivalaya, Town And District- Patna
2. Managing Director Null Bihar State Food And Civil Supplies Corporation Ltd., Patna, At Birchand Patel Marg, Sone Bhawan, Fifth Floor, Patna, P.S.- Sachivalaya, Patna
3. Chief Of Administration Null Bihar State Food And Civil Supplies Corporation Ltd., Patna, At Birchand Patel Marg, Sone Bhawan, Fifth Floor, Patna, P.S.- Sachivalaya, Patna
4. Chief Of Procurement Null Bihar State Food And Civil Supplies Corporation Ltd., Patna, At Birchand Patel Marg, Sone Bhawan, Fifth Floor, Patna, P.S.- Sachivalaya, Patna
5. Chief Of Claim Bihar State Food And Civil Supplies Corporation Ltd., At Birchand Patel Marg, Sone Bhawan, Fifth Floor, Patna, P.S.- Sachivalaya, Patna
6. The District Manager Bihar State Food And Civil Supplies Corporation, East Boring Canal Road, Patna, P.S.- Budha Colony, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Dr Umashankar Prasad, Sr Advocate with
M/s Kamala Kant Tiwary & Rajeev Kr, Advocates

For the Respondent/s : Mr R S Pradhan, Sr Advocate with
Mr Amrendra Narayan Rai, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 05-10-2015

Heard Mr Uma Shankar Prasad, learned Senior Counsel
appearing for the writ petitioner-appellant and Mr R S Pradhan,

learned Senior Counsel appearing for the Bihar State Food and Civil Supplies Corporation Limited (For brevity, *the Corporation*).

2 The appellant was the writ petitioner. He has challenged part of the order passed by the learned Single Judge.

3 In the writ petition, the writ petitioner-appellant had challenged two orders passed by the Managing Director of the Corporation. Annexure 12 was an adjudicatory order of recovery of amounts due on account of embezzlement in the stocks of foodgrains in the charge of the writ petitioner-appellant and Annexure 16 was the order of dismissal of the writ petitioner-appellant on account of non-deposit of the said amount. The learned Single Judge, having examined the matter in detail, came to a clear finding that the writ petitioner-appellant was granted adequate opportunity to meet the charge of embezzlement of foodgrains while he was Manager of the foodgrains godowns. He was repeatedly noticed. He was asked to produce witnesses to rebut the allegations but he failed to take advantage of the opportunities granted and adopted a completely non-cooperative attitude and tried his best to delay the matters. Ultimately, upon perusal of records, the Enquiry Officer found that the writ petitioner-appellant was liable to pay, by way of compensation, an amount of Rs 9,70,446.75 P. This report was again given to the writ petitioner-appellant. His reply, not being satisfactory, the final order, as contained in Annexure 12, was passed

directing him to deposit the said amount and fixing a period therefrom. The writ petitioner-appellant, not having complied with the said order in the manner and in the time prescribed by Annexure 12, Annexure 16 was passed dismissing the writ petitioner-appellant from service. Learned Single Judge, on the facts found as aforesaid, upheld the order, as contained in Annexure 12, and directed the said amount be paid by the writ petitioner-appellant but so far as Annexure 16 is concerned, the learned Single Judge set aside the said order as, admittedly, the said order was passed without any disciplinary proceeding being there for his dismissal and without charge or without notice to the writ petitioner-appellant with regard to the extreme action of dismissal. The order of dismissal, having been set aside, the learned Single Judge then directed his reinstatement but restricted the claim of back wages to 50%.

4 Let it be noted that so far as upholding Annexure 12 is concerned, the writ petitioner-appellant has filed this appeal alongwith impugning the deprivation of 50% of the back wages. The Corporation had also filed a Letters Patent Appeal being aggrieved by the judgment and order of the learned Single Judge in quashing the dismissal order, being LPA No 1644 of 2013 but that has been dismissed as far back as on 19.09.2014. We are, thus, left with the order which is impugned and to the extent impugned by the writ petitioner-appellant.



5 Having considered the facts and circumstances, as also the order of the learned Single Judge, we are of the view that the writ petitioner-appellant was only praying for time before the authorities. He was granted ample opportunity to defend himself. He was asked to produce his witnesses but on some pretext or the other or on some pretence or the other, he tried to delay the matter leaving no option for the authorities than to decide the matter upon evidences available on record. Even upon conclusion of enquiry, the Enquiry Officer, having found him liable to pay the embezzlement amount in relation to foodgrains, his reply was not satisfactory. In these view of the facts, as the Writ Court does not sit in appeal and power of judicial review is limited to decision making process and not the decision itself, we are unable to interfere with the order fastening civil liability on the writ petitioner-appellant by Annexure 12. We find learned Single Judge had also considered the matter in the right perspective and refused to entertain in that regard.

6 So far as setting aside dismissal order and consequential reinstatement with 50% back wages is concerned, we are again of the view that the learned Single Judge committed no wrong. The dismissal order was a rank illegality inasmuch as there were no disciplinary proceedings initiated leading to dismissal. It was an extreme punishment and the procedure, prescribed by law, was neither initiated nor called for reference.



7 Thus, the order of dismissal was rightly held by the learned Single Judge to be vitiated in fact and in law. That does not call for any interference. The learned Single Judge, having set aside the dismissal order, ordered for reinstatement but with 50% back wages only. Here again, we are in agreement with the learned Single Judge inasmuch as the situation was brought upon by the conduct/misconduct of the writ petitioner-appellant himself. It is well settled that the moment dismissal order is found to be bad and reinstatement is ordered, it does not follow, as a matter of right, that the reinstatement would be with full back wages. It is the discretion of the Court or Tribunal which has to be lawfully exercised. Here, noting the fact that petitioner's conduct forced the authorities to take the extreme step of dismissal, the learned Single Judge rightly did not order reinstatement with full back wages. We, thus, need not to interfere in that part of the judgment.

8 Having said so, learned counsel for the writ petitioner-appellant submits that inspite of the judgment and order of this Court, having passed as far back as on 24.11.2011, not a single penny has been paid to the writ petitioner-appellant. The learned Single Judge had directed for payment, after adjusting the amounts that were claimed by the Corporation. We would now issue directions in this regard. Writ petitioner-appellant was dismissed from service on 27.08.1997. The writ petitioner-appellant would have superannuated

on 28.02.2009. Therefore, for the period 1997 to 2009, writ petitioner-appellant would be entitled to half of his wages. Thereafter, writ petitioner-appellant would be entitled to his CPF and other retiral dues.

9 Within one month from today, the Managing Director of the Corporation would calculate 50% wages, CPF and other post retiral dues that are due. From that, he would deduct the amount of Rs 9,70,446.75 P, without interest, and pay the balance forthwith to the writ petitioner-appellant.

10 Let it be noted that the writ petitioner-appellant having superannuated in the year 2009, more than six years back, is in critical health condition. The entire calculation must accompany the payments, the responsibility whereof would be on the Managing Director of the Corporation for timely compliance of orders of this Court.

11 With the aforesaid observation and direction, this application stands disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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