

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2129 of 2015

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Surendra Jha son of Late Yugal Kishore Jha, resident of Bela Vihar, P.S. Mithanpura, District Muzaffarpur.

.... Petitioner/s

Versus

1.The Chairman Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.

2.The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.

3.The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.

4.The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Regional Office, Darbhanga.

5.The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Regional Office, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv

For the Respondent/s : Mr. Rajeev Ranjan Prasad, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 03-02-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

“For issuance of writ in the nature of certiorari for quashing of order contained in Memo No. 6861 dated 05.12.2014 issued by the Managing Director, Bihar Industrial Area Development Authority (hereinafter to be referred to as the BIADA only) whereby the claim made by the Petitioner for payment of back wages for the period from 01.12.2007 to 03.07.2014, i.e. during the period he remained under compulsory retirement, has been rejected in an arbitrary manner.”

Mr. Rajiv Ranjan Prasad, learned counsel appearing on behalf of BIADA at the outset has raised a



preliminary objection as with regard to maintainability of the writ application on the ground that the impugned order passed by the Managing Director, BIADA is appealable before the Chairman of BIADA in terms of Clause-2.8.1 of the Bihar Financial Service and Take Over Rules-2007.

Learned counsel for the petitioner, does not dispute this aspect but he is of the view that when this Court had directed the authorities to consider the case of the petitioner for grant of back wages pursuant to his reinstatement been set aside, the order of compulsory retirement in terms of the judgment of the Apex Court in the case of **Novartis India Limited vs State of West Bengal and Others**, reported in **2009(3) SCC 124**, they have not correctly applied the ratio while deciding the case of the petitioner. In this regard, he explains that even if it be held that in the period the petitioner was not working on account of his order of compulsory retirement of the BIADA to make alternative



arrangement for utilization of service, that by itself could not have led to entire forfeiture or withholding of the salary of the petitioner and at least appropriate ought to have been allowed as can be culled out from the ration laid down by the Apex court in the case of **Deepali Gundu Surware vs Kranti Junior Adhyapak Mahavidyalaya (D.E.D) and Ors**, reported in **2013(10) SCC 324**.

In the considered opinion of this Court there are two aspects of the matter which would require consideration and thus while in presence of statutory appeal, this writ application is definitely premature specially when the authority has rightly or wrongly complied in the backdrop of the ratio laid down in the case of **Deepali Gundu Surware (supra)** as per the direction of this Court.

One thing however is made clear that even if it cannot be laid down as a law that reinstatement will automatically entail the consequences of full back



wages, the authority deciding the matter relating to payment of back wages will have to take certain factors into consideration. In the present case the Managing Director, has gone into the issue but then has really not concluded the same in a logical manner. Assuming that BIADA had to engage someone to do the work of the petitioner, one of the principle could be that BIADA could have deducted that much amount which had to be paid for the requirement of the petitioner in the period he was out of service. This Court is not suggesting as to what could be actual amount but if the Managing Director of BIADA had denied the entire payment of salary for the period to the petitioner when he was kept out of service due to the order of compulsory retirement, there had to be a better consideration. This court however is not quashing the order passed by the Managing Director, BIADA but then it must give liberty to the petitioner to raise all these issues in an effective manner before the Appellate Authority. The Appellate

Authority is infact expected to examine the whole issue afresh while deciding the appeal of the petitioner. It is also made clear that if such appeal is filed within a period of one month from today, the Appellate Authority instead of non suiting the petitioner on ground of delay, if any, shall proceed to decide the case of the petitioner on merits in accordance with law.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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