

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1053 of 2013

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1. Ram Briksh Sah Son Of Late Ramji Sah Resident Of Village- Kanhauli
Bishundutt, Bela Imli Chowk, P.O.- R.K. Ashram, Bela, 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,
Regional Office, Muzaffarpur
5. The Officer-On-Special Duty, Bihar Industrial Area Development
Authority, Udyog Bhawan, East Gandhi Maidan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr. Rajeev Ranjan Pd. Advocate
Mr. Auash Chaturvedi, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR
TRIPATHI**
ORAL ORDER

4 27-08-2015 The petitioner has now superannuated. He was

an assistant working under Bihar Industrial Area Development

Authority (hereinafter known as 'BIADA').

Writ of the petitioner is for a direction upon the
respondents to pay him his salary for the period 14.03.2008 to
23.06.2009, the period petitioner remained under orders of
termination issued by the erstwhile Managing Director. The order
of termination was subsequently revoked by a common order
passed by the Chairman exercising his right in appeal. A copy of

the said order is annexure-10 to the writ application.

The brief facts are that a large number of employees of BIADA came to be dismissed for one reason or the other. This petitioner along with many others came to be dismissed because they went on illegal strike (unauthorized absence) though the petitioner takes a stand that he was very much present on duty and even marked his attendance. That fact did not make any difference because he was placed in the same category as other employees who came to be terminated for being absent from duty.

Such decisions lead to filing of many writ applications. The matter did not rest at the level of learned Single Judge's. Issue traveled before a Division Bench. The orders passed in applications came to be challenged in different L.P.As which was heard and decided on 10.08.2009. On the basis of the order passed by the Division Bench the petitioner along with rest of the employees came to be reinstated. They worked and some of them have superannuated including the present petitioner.

Petitioner has been agitating before the respondents for payment of his salary for the period he remained under order of termination but nothing came out of it, therefore, he decided to file the present writ application.



Submission of the counsel representing the petitioner is that the case of the petitioner is different from the rest. The petitioner was not a signatory in the application by which an offer was made by the Trade Union not to demand salary for the period of dismissal which formed the basis of the order by the Division Bench. It is also the stand of the petitioner's counsel that the trade union was no union in the eye of law; therefore, the decision of the Trade Union was not binding. The facts of this case are different from the rest.

What is of significance is the concluding portion of the order passed by the Division Bench on 10.08.2009. This order is required to be reproduced because it has significance to the dispute. The order reads as under;

“In the light of the aforesaid stand of the appellants in paragraph 6 of the third supplementary affidavit, all the appeals are finally disposed of in terms of the stand of the appellants in the third supplementary affidavit. As a result, all the effected writ petitioners will be taken back into their earlier service and the only injury they will suffer is non-payment for the period till they submit the joining and begin to work.”

If this is how the fate of the terminated employees came to be decided by the Division Bench then this



court is not willing to extend a benefit different from what the rest of the employees similarly terminated came to receive. Since a large number of the terminated employees along with the petitioner was reinstated on the orders of the Division Bench, with a clear undertaking or direction that they will not claim payment for the period of their termination till their joining, the petitioner cannot stand alone and derive a benefit which has not been extended to other employees merely because he was not a party to the litigation or has tried to demonstrate that his case is different from the rest.

The termination of petitioner was effected by a decision taken by the Managing Director with many. The reason for termination could be legal or illegal. All that dispute is not required to be reopened after what the Division Bench decided.

It will be in-equitable, if one employee will get the benefit of the salary or wages for the period of termination when rest of the employees similarly terminated and reinstated were barred from claim of such benefit by the Division Bench. The court also notices that the order of the Division Bench has stood its ground since no body has challenged the same either before a Superior Court or by seeking a review. If this be so this court would not help the petitioner overcome rigors which is by

a judicial order or pronouncement.

The court therefore, declines to pass any order in favour of the petitioner for extending the benefit of salary for the period of termination independent of the Division Bench order quoted above.

The writ application is rejected.

(Ajay Kumar Tripathi, J)

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