

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11887 of 2010

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Gopal Dutta Shukla S/O Late Ram Nath Shukla R/O Vill.- Bagoara, P.S.-
Daraunda, Distt.- Siwan

.... Petitioner

Versus

1. The Bihar State Road Transport Corporation Through Its Administrator,
Patna
2. The Administrator, Bihar State Road Transport Corporation Parivahan
Bhawan, Veerchand Patel Path, Patna
3. The Chief Of The Operation Then Sri Sashi Ranjan Prasad Singh The
Bihar State Road Transport Corporation Parivahan Bhawan, Veerchand
Patel Path, Patna
4. The Ex-Chief Of The Administration Sri Sukhdeo Choudhary
B.S.R.T.C., Patna
5. The Divisional Manager, Muzaffarpur Division B.S.R.T.C.
6. Sri G.S. Kang, Ex-Administrator, B.S.R.T.C., Patna
7. Sri Dilip Kumar Verma Then The Divisional Manager, Muzaffarpur,
Division Bihar State Road Transport Corporation

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arvind Prasad Singh

For the Respondent/s : Mr. P.K.Verma

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 19-05-2015 Heard learned counsel for the parties as with regard to the
following relief prayed in this writ application:

“That this is application praying for issuance of a writ in
nature of certiorari for quashing the order passed by the
Administrator Bihar State Road Transport Corporation by
the letter no. 4007. St. Gen. Misc.-5/2010 dated 25.6.2010
whereby and whereunder the representation filed by the
petitioner before the Administrator, according to the
direction of the Hon’ble Court in C.W.J.C.No.
16926/2009 dated 25.1.2010 has been rejected and further
for direction to the respondents to make payment of salary
with statutory interest with effect from 8.10.2004 to



28.11.2007, of the period of the compulsory retirement which was passed by the Administrator B.S.R.T.C. Sri G.S.Kang under Rule 74(B) 11 of the Bihar Service Code, whereby and whereunder the petitioner was illegally, compulsory retired from his service on dated 8.10.2004 and again the administrator quashed the order of the compulsory retirement on dated 28.11.2007 and restored the service of the petitioner and the petitioner is reinstated in service.”

Learned counsel for the petitioner has submitted that once the petitioner's order of compulsory retirement was set aside by the authority himself he would be entitled for payment of full salary and emoluments. In this regard he has also referred to the case of one Ram Pravesh Prasad Sharma in paragraph no.29 of the writ petition but unlike the petitioner was earlier compulsory retired but later on his order of compulsory retirement was also recalled and the Bihar State Road Transport Corporation thereafter had paid full salary with allowances for the period of compulsory retirement of Ram Pravesh Prasad Sharma.

Learned counsel for the Corporation, on the other hand, has initially invited attention of this Court towards a subsequent decision taken in the case of the petitioner during the pendency of this writ application whereby and whereunder the Administrator of the Corporation on 7.3.2014 had held that though the period of the

petitioner remaining out of service from 8.10.2004 to 28.11.2007 shall be treated as on duty for all purposes but the petitioner will not be entitled for payment of any salary and emoluments for the aforesaid period because of poor financial condition of the Corporation.

Learned counsel for the Corporation has also submitted that the case of Ram Pravesh Prasad Sharma is clearly distinguishable because in the case of the petitioner the order of compulsory retirement having been assailed before this Court in a writ petition was upheld and even when the petitioner had filed an appeal, the same was not disturbed. According to the learned counsel for the Corporation, the effect of inter party order dated 25.5.2007 in C.W.J.C.No. 13410/2004 would automatically bind the petitioner and would not allow him at least to claim something for the period he had remained out of service pursuant to the order of compulsory retirement, which was recalled by the Corporation after dismissal of the writ petition and in fact withdrawal of the appeal being L.P.A.No. 641/2007 by an order dated 1.11.2007.

Payment of back wages on account of reinstatement is not a matter of right. It can be refused on any number of grounds. The financial crunch itself is a good ground. It is well known fact that the Bihar State Road Transport Corporation had/

has been going to very bad financial condition and therefore, this Court does not find any error in the order dated 7.3.2014.

That apart what really would come in the way of the petitioner is the effect of inter-party judgment. The petitioner's order of compulsory retirement dated 8.10.2004 having been assailed by him in C.W.J.C.No. 13410/2004 was affirmed by dismissal of the writ petition on 25.5.2007 as would be apparent from the judgment thereof, contained in Annexure 6 to the writ application. As a matter of fact when the appeal was filed by the petitioner, L.P.A.No. 641/2007 the Division Bench also did not interfere with the order of the learned Single Judge and in fact by an order dated 1.11.2007 when the learned counsel for the petitioner after making some argument had sought leave to withdraw the appeal in order to file a review application. That permission was accorded. Such order of the Division Bench dated 1.11.2007 cannot mean that the order of the learned Single Judge and the finding recorded therein in his judgment affirming the compulsory retirement was in any way interfered.

In that view of the matter, if after withdrawal of the appeal the petitioner had moved the authority for seeking review of the order, he should treat himself to be fortunate because the order passed by the authority had merged with the order of this Court

and in all fairness the authority also was not in a position ought to have not reviewed his own order.

Be that as it may, that order was reviewed only on 28.11.2007 and therefore, the petitioner's any and every benefit will emerge only from 28.11.2007 because prior to that date he will be bound by the effect of the inter-party judgment.

In that view of the matter, this Court does not find any merit in this application and it is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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