

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9174 of 2014

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Krishna Kumar Choudhary son of Sri Radhe Shyam Choudhary r/o Ramni Mohan Garden, Kalam Bag Road, P.S. Kuazi Mohamadpur town and district Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna cum-Chairman Bihar Industrial Area Development Authority, Bihar, Patna.
2. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority, through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The Secretary, Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Executive Director, Bihar Industrial Area Development Authority Regional Office Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Jai Kishor Poddar, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

Date: 28-11-2016

Impugned order is Annexure-1. The date of the order is 15.04.2014. By virtue of this order the claim of the petitioner of back wages for the period 30.05.2007 to 22.10.2013 has been rejected by the Managing Director of Bihar Industrial Area Development Authority ((hereinafter referred to as 'the BIADA'). Annexure-1 is a detailed office order dealing with the claim of the petitioner and the concluding portion of the order has a finding that the petitioner during this period in question, when he was compulsorily retired, was in a gainful employment. Since payment for the period in

question relates to the period when the petitioner was removed from service, therefore, the Managing Director could be correct in relying on the principle enunciated in the case of *Novartis India Ltd. Vs. State of West Bengal and Others*, reported in (2009) 3 SCC 124.

Counsel for the petitioner submits that there is no adequate material for establishing and, therefore, the finding or the principle in absence of evidence must go and a direction is required to be issued.

Finding the evidence of such kind is not easy especially when an employee will not part with such evidence that easy. There are economic reasons why an employee will not let go all his advantage if it can accrue in his favour by not cooperating in this regard. But there is enough circumstantial evidence to show from the counter affidavit filed on behalf of the respondents as well as the rejoinder application filed by the petitioner that even while the petitioner was in job his energy and heart was elsewhere. Petitioner is a trained Chartered Accountant and the fact is not a matter of dispute, therefore, a person with such talent and experience has gainfully utilized his period of compulsory retirement by using his skill as a Chartered Accountant. The petitioner even after retirement continues with his practice as a Chartered Accountant. Therefore, it is not one of the cases where an employee is required to be

compensated for a wrongful decision to disassociate him from employment whatsoever be the reason or the nature of such disassociation.

In view of the above, the office order dated 15.04.2014 may not require to be interfered with.

Writ is dismissed.

(Ajay Kumar Tripathi, J)

Pawan/-

AFR/NAFR	NAFR
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