

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.212 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 14833 of 2012**

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1. The Chairman, Bihar Industrial Area Development Authority, Industries Department, New Secretariat, Vikash Bhawan, Patna.
 2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna, 800004.
 3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna, 800004.
 4. The Executive Director, BIADA, Regional Office, Brari Industrial Estate, Bhagalpur.

.... Appellants

Versus

1. Arvind Kumar Singh, son of Late Biswanath Singh, resident of A/3 Vitta Vibhag Colony, Phase II, Maurya Path, Khajpura, P.S. Rajiv Nagar, Patna.- 800014.
2. The State of Bihar through the Industrial Development Commissioner cum Principal Secretary, Industries Department, New Secretariat, Vikash Bhawan, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Piyush Lall, Advocate.
For the Respondents : Mr. R.N. Mukhopadhyaya, Advocate.
Md. Nazir Ansari, Advocate.
Mr. Arun Kumar, A.C. to G.P. 5.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-06-2016

Heard learned counsel for the parties.

2. The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 4th of October, 2012 in C.W.J.C. No. 14833 of 2012, whereby the appellant Bihar Industrial Area Development Authority (hereinafter referred to as “BIADA”) was directed to reconsider the representation

of the writ petitioner and to pass appropriate order in the light of Fundamental Rule 54A.

3. The facts in brief are that the services of Respondent No. 1, the writ-applicant, was terminated on 17th of March, 2008. The appeal against the order of termination was dismissed. Thereafter, the Respondent No. 1 filed writ application C.W.J.C. No. 6472 of 2010. The writ application was allowed on 6th of October, 2010 for the reason that the order has been passed in violation of the principles of natural justice. While setting aside the order of termination, liberty was given to the department to pass fresh order in accordance with law.

4. It is thereafter; in the disciplinary proceedings an order was passed exonerating the writ-applicant in respect of encroachment of land of M/s Shushila Enterprises but the writ-applicant was found responsible for not taking action for removing the encroachment and consequently held guilty. After returning such finding, the punishment authority passed an order of non-payment of salary for the period 17.03.2008 till 22.11.2010 for the reason that payment of salary will be wastage of public fund.

5. The learned Single Bench passed an order rejecting the reasoning given by the competent authority of not paying wages for the intervening period and thereafter directed the authorities to

pass a fresh order in terms of Fundamental Rule 54A.

6. Learned counsel for the appellants contends that Rule 54A is not applicable to the employees of BIADA as Fundamental Rule is applicable only to the employees of the Central Government. It is contended that in fact Bihar Service Code (hereinafter referred to as “the Code”) would be applicable in respect of the employees engaged by an instrumentality of the State. He refers to Rule 97 of the Code which contemplates that an employee shall be entitled to full salary if he has been fully exonerated. Since Respondent No. 1 has been found guilty of not taking any appropriate action against the encroachment, therefore, the order passed is within the four corners of the scope of Rule 97 of the Code.

7. We have heard learned counsel for the parties and find merit in the present appeal. A perusal of the order shows that the Respondent No. 1 has not been fully exonerated. It is only in case of complete exoneration, an employee is entitled to full pay and allowance in terms of sub-clause (2) of Rule 97 of the Code.

Rule 97 of the Code is reproduced hereunder:-

“97. (1). When a Government servant who has been dismissed, removed, or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of

his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose;

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

8. Sub-clause (1) of Rule 97 empowers the authority to pass an order of payment of pay and allowances in respect of an employee who has been dismissed, removed or suspended in the event of his reinstatement. However, the employee is entitled to full pay and allowances in case he has been fully exonerated. Since Respondent

No. 1 has not been fully exonerated, therefore, the payment of salary for the intervening period from the date of removal till the date of reinstatement cannot be said to be unjustified.

9. Consequently, the Letters Patent Appeal is allowed and the order passed by the learned Single Bench is set aside.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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