

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4317 of 2013

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1. Raj Nandan Prasad S/O Late Raghu Nandan Prasad Resident Of Village Dayachak, Police Station Barh, District Patna.

.... Petitioner/s

Versus

1. The Bihar State Road Transportation Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna-1, Through Its Administrator.
2. The Chief Of Administrator, Bihar State Road Transport Corporation, Pariwaha Bhawan, Birchand Patel Path, Patna.
3. The Divisional Manager, Bihar State Road Transport Corporation, Bhagalpur Division, Bhagalpur (Bihar).
4. Transport Commissioner, Jharkhand State, F.P. Bhawan, H.E.C. Parishad, Dhurwa, Ranchi.
5. The Divisional Manager, Dhanbad Division, Jharkhand State Road Transport (Transport Department), Dhanbad, Jharkhand.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. TEJ NARAYAN SINGH, Adv.

For the Respondent/s : Mr. PRABHAT KUMAR VERMA

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-01-2016

Heard counsel for the petitioner and the respondents.

In this case, petitioner is seeking relief for quashing the order No.600 dated 31st January 2011 passed by the Chief Administrator, the Chief of Administrator, Bihar State Road Transport Corporation, Patna whereby and whereunder he has rejected the representation of the petitioner depriving him of his salary for the period 12^{sdth} May 2005 to 19th September 2007.

The short facts of the case is that while the petitioner was posted as Divisional Manager, Bhagalpur Division, BSRTC in May 2006, order was passed for his compulsory retirement from service under Rule 74(Kha)(2) vide order No. 213 dated 12th May 2006 by way of punishment.

Petitioner had joined the service six months prior to order of

compulsory retirement, cause was shown that the petitioner did not achieve the due target. The said order was passed without giving any opportunity to the petitioner which was required to be given.

Petitioner being shocked to receive the order of his compulsory retirement filed representations against the impugned order before the Administrator on 29th May 2006, 25th September 2006 and 25th Jul 2006 drawing attention of the authority about the manner the illegal order has been passed. After due consideration, Office order no.223 dated 12th May 2006 was issued and thereby the order of compulsory retirement was withdrawn and, accordingly, he was reinstated vide Order No. 11 dated 19th September 2007 in the Head Office, Patna and in pursuance thereof, he joined the Head Office and started discharging his duties. Later on he was transferred to Muzaffarpur and Chapra as Divisional Traffic Manager worked till 2008 and in January 2009 petitioner joined at Dhanbad (Jharkhand) on transfer by the order of Administrator, BSRTC, Patna.

CWJC No. 11324 of 2006 was filed which was dismissed as not pressed and later on he filed an application for payment of salary for the period he was kept out of service on account of passing order of compulsory retirement. It is a fact that the petitioner was compulsorily retired on account of misconduct, the Administrator withdrew the order but by the impugned order it appears that the Administrator has refused to grant relief of payment on the same ground which was there at the time of passing the order of compulsory retirement.

When the order of compulsory retirement has been withdrawn, treating the same to be illegal it is not justified to deprive the petitioner of the salary for the period petitioner could not discharge his duty on account of order of compulsory retirement. That cannot be a factor to deprive the petitioner of the salary which he is entitled to, had he not been compulsorily retired.

This Court feels that the order has been passed without proper application of mind, rather it is an arbitrary exercise of power by the Administrator. Discretion has to be exercised in proper manner and not in arbitrary manner in view of the fact, the factor which was imputed in the compulsory retirement was withdrawn cannot be basis and reason to refuse to pay the salary for the period of his absence from service.

With the above observation/direction, this petition is allowed.

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(Shivaji Pandey, J)