

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10095 of 2016

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Dr. Naresh Prasad Singh, Son of late Banke Singh. Resident of Main Road, Barh
(Near Kachhahri), P.S -Barh, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Special Secretary, Department of Health, Government of Bihar, Patna.
3. Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
5. The Under Secretary, Department of Health, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
Mr. Sahjanand Sharma, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-03-2017

Heard Mr. Shiv Kumar, learned counsel appearing for the
petitioner and Mr. Shankar Kumar, learned Assisting Counsel to
Additional Advocate General No.7 for the State.

The petitioner while praying for quashing of the
notification bearing No.516(9) dated 11.5.2016, a copy of which is
impugned at Annexure-7 to the writ petition issued by the State
Government in the Health Department, has also prayed for issuance
of a writ in the nature of mandamus commanding the respondent
authorities to make payment of salary of the petitioner for the
period 2.12.2009 i.e. the date of his dismissal until his retirement
i.e. 31.5.2015 in view of the judgment and order of this Court



passed in CWJC No.3517 of 2010, a copy of which is placed at Annexure-1. The petitioner also seeks a direction to the respondent authorities to make payment of full salary and emoluments for the period under suspension i.e. 26.2.2005 to 1.12.2009 which was put to question together with the dismissal order dated 2.12.2009 in the previous round of litigation arising from CWJC No.3517 of 2010, which writ petition was allowed on 6.5.2014.

I have heard learned counsel for the parties and I have perused the records.

The facts giving rise to the present writ petition briefly stated is that the petitioner holding the post of Incharge District Leprosy Officer at Samastipur was served with a charge memo dated 26.2.2005 initiating a proceeding , inter alia, for some alleged act of misconduct and which resulted in a termination order bearing Memo No.1351(9) dated 2.12.2009.

According to Mr. Shiv Kumar, learned counsel appearing for the petitioner, the termination order did not contain any stipulation as to the restriction of pay and allowances during the suspension period. According to him, no order was passed as to how the suspension period was to be dealt with as well as regarding the pay and allowances admissible to the petitioner during the said period.



The dismissal order was put to question by the petitioner before this Court in CWJC No.3517 of 2010 together with a prayer for reinstatement with full back wages and consequential benefits. The writ petition was allowed by a coordinate Bench of this Court vide judgment and order passed on 6.5.2014 present at Annexure 1 and although the punishment order was quashed and set aside and the petitioner was reinstated but no order was passed as regarding the back wages or the consequential benefits arising therefrom. Following the judgment and order of this Court passed in CWJC No.3517 of 2010 the petitioner gave his joining before the Principal Secretary on 4.7.2014 but the joining was not accepted and which led to filing of a contempt application in this Court giving rise to MJC No.3596 of 2014. On the other hand, the respondent-State challenged the order of the writ court in LPA No.1636 of 2014. The Letters Patent Appeal so preferred by the State was dismissed by judgment and order passed by the Division Bench on 8.1.2016, a copy of which is present at Annexure-3. In between the petitioner superannuated on 31.5.2015 and when the contempt application was taken up for consideration on 16.3.2016 it was stated on behalf of the State in reference to a notification dated 1.3.2016 present at Annexure-4 that the petitioner has been reinstated in service with effect from 2.12.2009 i.e. the date of dismissal. The Bench hearing



the contempt application, taking note of the stand of the State that the petitioner has been reinstated in service with effect from 2.12.2009 dismissed the contempt application as having become infructuous while observing that the petitioner would be entitled to the benefits arising from reinstatement. The petitioner represented vide Annexure 6 and which has been rejected by the order dated 11.5.2016 impugned at Annexure 7.

The short argument advanced by Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner in the circumstances discussed is in reference to a judgment of the Supreme Court since reported in **(2013)10 SCC 324 (Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya)** and with particular emphasis on paragraphs 21 and 22 of the judgment he submits that the moment a dismissal order is set aside and a delinquent is reinstated he becomes entitled to the back wages. He thus submits that since the termination order was found to be illegal and was quashed by this Court directing for reinstatement from the date of dismissal and since the respondents have admitted to reinstatement of the petitioner with effect from 2.12.2009 before the contempt court as manifest from Annexure-5 and the contempt Court has found the petitioner entitled to the benefits arising from such reinstatement then the case of the



petitioner for consequential benefits would stand guided by the judgment of the Supreme Court as observed in paragraph 21 and 22 of the judgment in **Deepali Gundu Surwase** (supra) until his date of superannuation.

In so far as the pay and allowances during the suspension period is concerned, he submits that even though rule 11 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') does enable the Disciplinary Authority to pass appropriate order as regarding treatment of the period of suspension on reinstatement but no such order either was passed at the stage of the earlier punishment order or at the stage of reinstatement and now that the petitioner has superannuated on 31.5.2015, no such order can be passed.

The argument of Mr. Shiv Kumar, learned counsel appearing for the petitioner has been contested by Mr. Shankar Kumar, learned Assisting Counsel to Additional Advocate General no.7 inter alia, on grounds that neither the Writ Court allowed the petitioner the consequential benefits nor the petitioner was found entitled to the benefits on the principle of 'No Work No Pay' and thus the order put to challenge does not require any interference.

Having heard learned counsel for the parties and having



considered the materials on record, I am of the opinion that the petitioner has made out a case for indulgence. There cannot be any contest to the arguments advanced by Mr. Shiv Kumar on the entitlement of the petitioner towards the pay and allowances admissible to him during the suspension period as well as to the salary admissible to him for the period subsequent to the judgment of the Writ Court passed on 6.5.2014 until his superannuation on 31.5.2015 but this Court had initial reservations as to whether the petitioner would be entitled for his salary for the period 2.12.2009 i.e. the date of his termination until his reinstatement by this Court on 6.5.2014 in the nature of the order passed in CWJC No.3517 of 2010.

There is absolutely no contest that the moment the Writ Court by the judgment and order dated 6.5.2014 quashed the termination order dated 2.12.2009 and which judgment and order was not interfered with by the Division Bench in the Letters Patent Appeal preferred by the State as manifest from Annexure-1 and 3 respectively the petitioner became entitled to the salary and the benefits arising therefrom with effect from the date of judgment i.e. 6.5.2014 until his superannuation on 31.5.2015. The action on the part of the State in not allowing the petitioner to join the post even when he gave joining vide Annexure-2, rather to keep him engaged in litigation until his superannuation on 31.5.2015, is sufficient



explanation of the fact that the fault lay with the respondents in not allowing the petitioner to join the post. There being no laches on the part of the petitioner since after quashing of his dismissal order, the action of the State to keep him away from his post until his superannuation on 31.5.2015, cannot enure to their advantage rather would entitle the petitioner to the salary for the period and other benefits.

The issue whether the petitioner would be entitled to his salary for the period with effect from the date of his dismissal i.e. 2.12.2009 till his reinstatement in view of the judgment of the Writ Court passed on 6.5.2014 stands answered in the observation of the Court on the contempt application, a copy of which is placed at Annexure-5 where the Court while considering the statement of the State that the petitioner was reinstated with effect from 2.12.2009, has observed that the petitioner would be entitled to the benefits arising from such reinstatement. Now the direction of the Court when tested against the legal position settled by the Supreme Court in the case of **Deepali Gundu Surwase** (supra), entitles the petitioner to the back wages and for the sake of convenience I am persuaded to reproduce paragraphs 21 and 22 of the judgment in **Deepali Gundu Surwase** (supra) which runs as follows:

“21. The word “reinstatement” has not been defined in the Act and the Rules. As per *Shorter Oxford English Dictionary*, Vol. 2, 3rd Edn., the



word “reinstate” means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word “reinstatement” means the action of reinstating, re-establishment. As per *Law Lexicon*, 2nd Edn., the word “reinstate” means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per *Merriam-Webster Dictionary*, the word “reinstate” means to place again (as in possession or in a former position), to restore to a previous effective state. As per *Black’s Law Dictionary*, 6th End., “reinstatement” means:

“To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed.”

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant



statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

This brings this Court to the last issue regarding restriction of pay and allowances admissible to the subsistence allowance drawn by the petitioner during the suspension period i.e. 26.2.2005 till 1.12.2009. In my opinion, in view of the undisputed position available on the records of the proceedings where neither the dismissal order dated 2.12.2009 contained any such order as required to be passed under rule 11 of the ‘Disciplinary Rules’ enabling the Disciplinary Authority to restrict the pay and allowances of a delinquent to the subsistence allowance drawn for the suspension period nor any such order having been passed by the Disciplinary Authority on the reinstatement of the petitioner until his superannuation, no such order can now be passed after cessation of master and servant relationship in between the petitioner and the State on reaching the age of superannuation on 31.5.2015. The



order thus impugned, in so far as it restricts the pay and allowances of the petitioner for the suspension period to the subsistence allowance drawn by him, cannot be upheld. The dismissal order having been quashed, the petitioner having been reinstated and no order having been passed by the Disciplinary Authority while the petitioner was in service as regarding restriction of his pay and allowances for the suspension period, no such order can be passed after his superannuation.

For the reasons aforementioned this writ petition is allowed. The order bearing No.516(9) dated 11.5.2016 impugned at Annexure-7 is quashed and set aside.

Let appropriate steps be taken for payment of salary of the petitioner with effect from 26.2.2005 until his superannuation i.e. 31.5.2015 after adjusting the payment made to him towards the subsistence allowance within a period of three months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23-03-2017
Transmission Date	NA

