

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1477 of 2014
IN
Civil Writ Jurisdiction Case No. 8539 of 2004**

- =====
1. Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna- 4
 2. Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Patna

.... Appellant/s

Versus

1. Manoj Kumar Sinha, S/o Late Babu Lal Sinha, resident of village Bigrahpur, P.O.- G.P.O. Patna, P.S. Jakanpur, District Patna, presently posted as Draftman in Bihar Industrial Area Development Authority, Udyog Bhawa, Patna- 4
2. State of Bihar through Commissioner cum Secretary, Department of Industry, Bihar, New Secretariat Building, Patna
3. Director, Department of Industries, Bihar at New Secretariat Building, Patna
4. Chairman, Bureau of Public Enterprises, Finance Department, Old Secretariat, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Piyush Lall, Advocate

For the Respondent/s : Mr. Harish Kumar, GP-32

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-04-2017

Seeking exception to an order dated 11.5.2007 passed by the learned Writ Court in C.W.J.C. No.8539 of 2004, this appeal has been filed under Clause 10 of the Letters Patent.

2. Petitioner, claiming to be an employee and representing the interest of various employees working in the Bihar Industrial Area Development Authority (for short BIADA), filed the writ petition in the year 2004 and it was his case in the writ petition



that the respondent BIADA has taken a decision to implement the report of the 5th Pay Revision Commission and claiming the same, the writ petition was filed.

3. In the writ petition, a supplementary counter affidavit along with the resolution of the Board dated 22.9.2006 was brought on record wherein the Managing Director based on the decision of the Board indicated that the Board decided to implement the 6th Pay Revision Commission to the employees working in the Development Authority. Taking note of the aforesaid, on 11.5.2007 the writ petition was allowed and disposed of in the following manner:

“Heard Counsel for the parties.

By a supplementary counter affidavit an order dated 22.09.2006 has been brought on record. This letter of the Managing Director categorically stated that the recommendations and benefits of VIth Pay Revision Commission has been made available to the employees of BIADA, the petitioner admittedly is an employee and this is the relief which he had asked for in the writ application. In view of the office order dated 22.09.2006 nothing more need to be said except that it is hoped and expected that the respondents would pay the necessary revised pay scale to the employees in terms of the office order.

This writ application in view of the supplementary counter affidavit above has become infructuous. It is accordingly dismissed as having become infructuous.”

4. Now it is the case of the appellant that in the year 2009, considering the precarious financial condition of the



Authority, it is not possible to implement the earlier decision taken in original resolution dated 22.9.2006 and, therefore, the appeal has been filed seeking quashment of the order passed by the learned Writ Court on 11.5.2007.

5. We are of the considered view that on such consideration no indulgence can be made into the matter. The writ petition was filed in the year 2004 and when the writ petition was disposed of, as indicated hereinabove, on 11.5.2007, neither the decision of the Board which was taken in the year 2009, nor the reasons which weighed with the Board for taking the decision in its resolution were examined or a decision taken by the writ Court. A ground which was never considered or decided by the learned Writ Court while exercising its original jurisdiction under Article 226 of the Constitution, cannot now be subject matter of consideration in this appeal under Clause 10 of the Letters Patent when these questions were never adjudicated, canvassed or even pleaded before the writ Court. The appellant Board or the Authority, if they are entitled to take a decision and implement the decision taken in the year 2009 which has the effect of withdrawing from the original resolution which was passed on 22.9.2006, that can be adjudicated and considered in an appropriate proceedings in accordance with law, but not in these proceedings.

6. Even though Shri Piyush Lall, learned counsel



appearing for the appellant, argued that the decision with regard to withdrawal of the resolution dated 22.9.2006 was canvassed in the writ petition and rejected by the learned Writ Court, we cannot take cognizance of the aforesaid fact as the same is not the issue before us.

7. In this appeal, we are not inclined to go into the aforesaid questions for the simple reason that the question which is now canvassed before us was never a question which was pleaded or considered, much less decided in the writ petition on 11.5.2007 when the writ petition was disposed of.

8. Accordingly, finding no ground to interfere into the matter, we dispose of the appeal, leaving the question and reasoning of the subsequent decision taken by the authority to be canvassed before an appropriate Forum in accordance with law.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

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