

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15956 of 2013

=====

Udeshwar Kamti S/O Late Maini Kamti Resident Of Village & Post Office -
Haripur, Dih Tola, P.S. Kaluahi, District - Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary, Department Of Industries, Government Of Bihar - Cum - Chairman, Bihar State Credit And Investment Corporation Limited
2. Bihar State Credit And Investment Corporation Limited, Having Its Office Situated At Indira Bhawan, 4th Floor, Ram Charitra Singh Path, P.O. G.P.O., P.S. Srikrishnapuri, Town & District Patna, Through Its Managing Director
3. Managing Director, Bihar State Credit And Investment Corporation Limited, Having Its Office Situated At Indira Bhawan, 4th Floor, Ram Charitra Singh Path, P.O. G.P.O., P.S. Srikrishnapuri, Town & District Patna, Through Its Managing Director

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Jha, Adv.
For the Resp. 2 & 3 : Mr. Nirmal Kumar, Adv.
For the State : Mr. Anirban Kundu, SC-24

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner has claimed for payment of back wages for the period 15.10.2004 to 22.9.2008 as he was not paid as remained out of service on account of his termination on the charge of misdemeanor.

In the present case, the petitioner was appointed on the post of Stenographer in the Bihar State Credit & Investment Corporation Limited. The petitioner, while he was in service, a departmental proceeding was



initiated against him for misbehaving with the female staffs as also coming in the office in inebriated state, threatening the co-employees, led to termination of his service which the petitioner challenged in C.W.J.C. No. 9037 of 2005 wherein it has been held that the enquiry report dated 11.10.2004 was submitted with a finding of guilty was recorded against him but, the Court recorded that the procedure, which was followed, was unknown to the law as no memo of charge was issued, copy of enquiry report was not made available, no second show-cause was issued with regard to proposed punishment and the order was set aside with a liberty to the Corporation to hold proper enquiry. In pursuance to the order passed by this Court, proper enquiry was conducted, exonerating the petitioner from all the charges which was accepted by the Deputy Manager (Administration) but, the petitioner has been denied the salary for the period remained out of job on the principle of “No Work No Pay”.

Learned counsel for the petitioner submits that the principle of “No Work No Pay” does not apply in the present case. This principle only applies as and when the employee fails to report to the duty but, here, in the present case, the employee has been dismissed from service which was found to be illegal and, on reinstatement, the petitioner cannot be deprived of the salary for the interregnum period. In support of his submission, he has placed reliance on the order passed by this Court in C.W.J.C. No. 3725 of 2009 wherein this Court has laid down principle that the employee was ready to discharge the duty but, the employer failed to take duty from the employee. So the principle of “No Work No Pay” cannot be applied and



this order has been affirmed up to the Hon'ble Apex Court.

Learned counsel for the petitioner has submitted that the Coordinate Bench of this Court has granted 100% of arrear of wages, so, the petitioner should also be given the same.

Per contra, learned counsel for the Corporation has submitted that granting of back wages lies within the domain of the employer and the Court cannot substitute his opinion with regard to entitlement of the back wages. In certain cases, the employer may refuse to grant benefit and he has placed reliance on the judgment passed in C.W.J.C. No. 838 of 2009 wherein I myself has remanded back the matter for reconsideration, has also placed reliance on the judgment in the case of *Babu Lal Vs. Haryana State Agricultural Mkt. Board* reported in 2009 (4) SCC 287.

Having considered the rival contentions of the parties, in the Babul case (supra), the Hon'ble Apex Court has refused to interfere with the order of the High Court as the High Court has set aside the order of the court below, whereby, the employee was deprived of back wages and the matter was remanded back for further consideration. In the present case, this Court could have remanded back the matter for further consideration but, as the petitioner has already superannuated from service and remanding the matter for fresh consideration with regard to back wages will extend the incarceration of the petitioner who has already superannuated much earlier in the year 2008. It is also a fact that during period, in question, the petitioner has not contributed in the Corporation and certainly, during that period, the petitioner must have been doing something for



running his livelihood.

In view of the entire facts and circumstances of the case, this Court holds that the petitioner is entitled to 65% back wages which should be made to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2017
Transmission Date	NA

