

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2144 of 2015

IN

Civil Writ Jurisdiction Case No. 5507 of 2001

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Ram Niwas Sharma, Son of Sri Chandradeo Sharma, resident of village - Baijalpur,
P.S. Uphara, District - Aurangabad, Presently Posted at the Senior Selection Grade
Assistant in the Regional Office of Bihar Pollution Control Board, Deoghar

.... Appellant/s

Versus

1. Bihar State Pollution Control Board, Beltron Bhawan, Bailey Road, Patna
through its Chairman
2. The Chairman, Bihar State Pollution Control Board, Beltron Bhawan, Bailey
Road, Patna
3. Member Secretary, Bihar State Pollution Control Board, Beltron Bhawan, Bailey
Road, Patna
4. The Regional Officer, Bihar State Pollution Control Board, Beltron Bhawan,
Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pushkar Narayan Sahi, Sr.Adv.
For the Respondent/s : Mr. Shivendra Kishore, Sr.Adv.
Mrs. Binita Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 13-09-2017

Heard learned senior counsel for the appellant and
learned senior counsel for the Pollution Control Board.

The writ application of the present appellant was
dismissed vide order dated 30.10.2015. The effort made on behalf of
the appellant to make a few bucks more by filing the writ application
on an interpretation sought to be given in the relief by yet another
Single Judge in the previous round of litigation has miserably failed



and, therefore, the appeal.

It is of relevance that the appellant was earlier dismissed from service. That order of dismissal was passed on 25.05.1992, but vide order dated 22.05.1998 passed in CWJC No.7748 of 1992, the learned Single Judge allowed the writ application in following terms which has been reproduced in paragraph 4 of the impugned order and is being re-reproduced for ready reference:-

“The petitioner will be reinstated on the post of Assistant in the Bihar State Pollution Control Board (in short, the Board) w.e.f. 1.6.1998. He will submit his joining in the Head Office on 1.6.1998 and become entitled to salary from that date, even though the Board does not issue any formal order of posting. The petitioner however will not be entitled to salary from the date of order of dismissal is 25.5.1992 upto 31.05.1998. The aforesaid period will be treated as period under suspension by way of punishment. The petitioner however will be entitled to continuing of service. In other words, the intervening period will not be treated as breach in service for the purpose of seniority promotion etc. The petitioner agrees to be posted outside Patna for the present.

This writ application stands disposed of in the above terms.”

The second round of litigation started on the interpretation sought to be given by the appellant in the writ application that since the learned Single Judge treated the period between 25.05.1992 till 31.05.1998 as a measure of suspension he is entitled to the subsistence allowance.

A rather attractive kind of argument or innovation is



sought to be made on behalf of the appellant when the learned Single Judge was unambiguous in his observation that this period of suspension is by way of punishment and not in contemplation of a departmental proceeding.

If the learned Single Judge, in the previous litigation, wanted to extend some monetary benefit as a measure of compensation to the appellant, he would not have stated in his observation that no salary would be payable for the period of dismissal. In other words, the learned Single Judge did not want to reward the appellant by giving any kind of monetary benefit. The reinstatement in service was good enough reward.

The learned Single Judge, whose order is under appeal ought to have dismissed the writ without going into the arguments in an extensive manner because what was sought to be done by the appellant was trying to seek modification/clarification if not a review of the order passed in the earlier round of litigation in the order dated 22.05.1998.

However, to the credit of the learned Single Judge, he took up the matter on the issue in quite a detail and by considering the various judgments even of the Apex Court he has made the distinction between cases where suspension is made as a measure of punishment vis-à-vis such suspension order which has been passed in



contemplation of a departmental proceeding.

The concluding portion of the learned Single Judge therefore holding that the appellant was not entitled to any benefit for the period of suspension, cannot be said to be erroneous.

The appeal is misplaced and is required to be dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.09.2017
Transmission Date	

