

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2327 of 2016

In

Civil Writ Jurisdiction Case No.7304 of 2007

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Rameshwar Das, Son of Late Punit Das, Resident of village - Gopalpur, P.S.
Cheria Bariarpur, District - Begusarai

... .. Appellant

Versus

1. The Bihar School Examination Board, through its Chairman, Patna, Bihar
2. The Chairman, Bihar School Examination Board, Patna, Bihar
3. The Secretary, Bihar School Examination Board, Patna
4. The Enquiry Officer, Shi S.K. Sinha, Joint Secretary (Retired) Education
Department, Patna
5. The Dy. Secretary, Bihar School Examination Board, Patna

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Avanindra Kumar Jha

For the Respondent/s : Mr. Gyan Shankar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 07-11-2017

Heard learned counsel for the parties.

2. A limited issue has arisen for consideration in the present appeal. The writ petitioner-appellant moved this Court being aggrieved by the order bearing Memo No.961 dated 26.02.2007 issued under the signature of the Chairman, Bihar School Examination Board, by which he had been dismissed from service. Petitioner prayed for quashing of the order of dismissal as also for consequential reliefs.



3. The learned single Judge upon hearing the parties to the writ application finally came to a conclusion as stated in paragraph 4(c) of the impugned order, which reads as under :

“4. (c) The petitioner having joined the service in May, 1970 i.e. after issuance of the certificate present at page 73/136 which records the date of birth of Raj Kishore Prasad as 10.5.1955, the subsequent certificate issued on 29.4.2005 issued under the signature of a person, other than the petitioner, neither any infirmity can be attached therewith nor the petitioner can be charged with any interpolation for any such correction had already taken place prior to December, 1969.”

4. Having considered the materials available on record, the learned single Judge in paragraph 8 of His Lordship's order observed as under :

“8. For the reasons aforementioned, the disciplinary proceeding including the final order of dismissal passed against the petitioner can neither be sustained in absence of the presenting officer nor can be sustained on merits, in absence of definite evidence connecting the petitioner with the alleged offence.”



5. The order of dismissal was set aside in view of the findings arrived at by the learned single Judge and consequential relief by way of 50% of salary admissible to the petitioner-appellant as well as the post retirement benefits admissible to him have been granted.

6. The respondent Board has not challenged the finding recorded by the learned single Judge in the impugned order dated 10.11.2016 passed in C.W.J.C. No. 7304 of 2007. It is, in fact, the writ petitioner, who is aggrieved by the said part of the order passed by the learned single Judge by which only 50% of the salary admissible has been allowed to him, has preferred the present appeal.

7. Learned counsel representing the appellant submits that once the learned single Judge having perused the records and upon consideration of the submissions advanced on behalf of the parties came to a finding as recorded in paragraph '8' of the impugned order, there was no reason as to why 100% salary admissible to the petitioner should not have been allowed. Learned counsel submits that the normal rule and the judicial pronouncements on the subject are consistent to this extent that unless an exceptional case is made out if an order of dismissal is set aside for want of a definite evidence connecting the delinquent employee with the



charges levelled against him, the Court would allow 100% salary admissible to him. He has placed before us a recent order dated 03.08.2017 passed by a coordinate Bench of this Court in L.P.A. No. 2293 of 2016 by which in a similar situation where the learned single Judge had allowed only 50% salary, the coordinate Bench held that once the termination is found to be illegal and unsustainable, the normal consequence would be reinstatement with all consequential benefits of back wages until and unless circumstance was available to show that the back wages cannot be granted in full or why only part of the back wages is to be granted.

8. Learned counsel submits that in the present case no such circumstance was pointed out either before the learned single Judge or is pleaded before this Court in opposition to this appeal to resist the claim of 100% salary of this petitioner.

9. On the other hand learned counsel representing the respondent Board submits that no doubt the Board has not preferred any appeal against the impugned order passed by the learned single Judge, but in the facts and circumstances of the case the learned single Judge is fully justified in awarding only 50% of salary admissible to the petitioner. Learned counsel has even attempted to argue on the merits of the case and the pleas, which he had taken before the learned single Judge but were rejected,



were once again sought to be argued before us. We are afraid we may not go behind the finding recorded by the learned single Judge because the Board has not preferred any appeal against the same.

10. Coming to the submissions made on behalf of the parties and the records placed before us, we do not find any circumstance pleaded or shown before the writ Court or in appeal here in this Court so as to take a view that only 50% of salary should be allowed to the petitioner. We have seen that the learned single Judge has come to a definite finding that there was no material connecting the petitioner with the alleged offence. If it is so, the petitioner would be entitled to get 100% of the admissible salary because he was kept out of service as a consequence to a completely illegal order of dismissal without any material to connect him with the charge levelled against him.

11. We accordingly allow this appeal to the extent while saving the order of the learned single Judge with respect to setting aside the dismissal order, we modify that part of the order by which the consequential benefits have been restricted to 50% of the salary admissible to the petitioner. We hold and declare that the petitioner would be entitled for all consequential benefits i.e. payment of 100% of salary admissible to him until the date of his



superannuation as well as the post retirement benefit which will be payable to him by virtue of this order. The impugned order is modified to the extent indicated hereinabove.

12. The appeal is allowed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	08.11.2017
Transmission Date	N/A

