

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.269 of 2017

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Arbind Kumar Verma, Son of Sri Ramji Lal Verma, Resident of 3A, Chaturbhuj Complex, West Boring Canal Road, P.O. - G.P.O. P.S.- Sri Krishnapuri, Patna- 1.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Industry Department, Govt. of Bihar.
2. The Board of Directors, BICICO, 4th Floor-Indira Bhawan, R.C. Path, Patna- 800001.
3. The Managing Director, Bihar State Credit and Investment Corporation Limited (BICICO), 4th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna- 800001.
4. The Manager, Administration, Bihar State Credit and Investment Corporation Limited (BICICO), 4th Floor, Indira Bhawan, Patna- 800001.
5. Deputy Manager (Administration), Bihar State Credit and Investment Corporation Limited (BICICO), 4th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna- 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girjanand Prasad, Adv.

For the Respondent-State : Mr. Subhash Pd. Singh, GA-3

For the Respondent-BICICO : Mr. Alok Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-12-2017

Heard Mr. Girjanand Prasad, learned counsel appearing for the petitioner, Mr. Alok Ranjan, learned Assisting Counsel to Mr. Nirmal Kumar, learned counsel appearing for the Bihar State Credit and Investment Corporation Limited (hereinafter referred to as the 'BICICO') and learned counsel for the State.

The petitioner is aggrieved by the order dated 24.9.2015 of the Managing Director of the 'BICICO' whereby his claim for salary for the period 3.12.2002 to 18.2.2007 has been rejected, inter alia, on grounds that he has failed to establish that he was not



gainfully employed during the aforesaid period.

The petitioner had earlier come before this Court in CWJC No.838 of 2009 and the writ petition was disposed of in the following terms:

“The fact is that the petitioner himself tendered resignation on 3.10.2002 and up to 2nd December he was not prohibited to discharge his duty. Thereafter vide order dated 3.10.2002 he was dismissed from service, from that point the employer did not allow him to serve. Certainly the petitioner cannot claim the benefit of pay from October to 2nd December, 2002 but with respect to other periods the employer has to take decision after giving notice as the application of the principle of ‘no work no pay’ is completely misconceived in this case. The employer has to decide entitlement of back wages on a proper consideration. The principle of back wages has been considered by the Hon’ble Supreme Court in the case of Deepali Gundu Serwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others, (2013) 10 SCC 324. There guide lines have been given for consideration as to in what circumstances and to what extent the benefit of back wages may be given. In such view of the matter to the extent to grant the pay on the principle of no work no pay is set aside and the matter is remanded back to the Corporation to decide the entitlement of petitioner’s pay from 3.12.2002 to 18.2.2002.

With this observation this application is disposed of.”

It is not in dispute that the ‘BICICO’ never went in appeal against the conclusion drawn by the writ Court and the judgment and order has attained finality.

The writ Court while remitting the matter has directed the



competent authorities of 'BICICO' to consider the claim of the petitioner in the light of the legal principles settled by the Supreme Court since reported in **(2013)10 SCC 324 (Deepali Gundu Serwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others).**

On remand of the matter the claim of the petitioner has again been rejected by the Managing Director of the 'BICICO' vide order impugned at Annexure 7 on grounds that he has failed to establish that he was not gainfully employed during the period in question. While holding as such, he has observed that the financial position of the Corporation is not good and the petitioner has not worked for the period in question.

In so far as the financial position of the 'BICICO' and the issue of working of the petitioner for the period in question, is concerned, these observations would have to give way to the view present in the earlier order of this Court at Annexure 5 and in so far as the objection as regarding the gainful employment of the petitioner for the period in question is concerned, i.e. 3.12.2002 to 18.2.2007, the onus lies on the 'BICICO' to prove the same because a negative cannot be proved. The petitioner certainly cannot be pressed to prove that he was not gainfully employed rather it is for the 'BICICO' to support its finding with the aid of evidence which



is completely missing in the present case.

For the reasons aforementioned the order dated 24.9.2015 passed by the Managing Director, ‘BICICO’ impugned at Annexure 7 cannot be upheld and is accordingly quashed and set aside. The Managing Director, ‘BICICO’ is directed to take steps for payment of salary of the petitioner for the period in question within three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11-12-2017
Transmission Date	NA

