

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12384 of 2016

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Bishram Ojha, son of Sri Radha Mohan Ojha, resident of Village- Balapur, P.S.
Industrial Area, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Additional Secretary, Department of Health, Government of Bihar, Patna.
3. Deputy Secretary, Department, of Health, Government of Bihar, Patna.
4. Director, Indigenous Medicine, Department of Health, Government of Bihar, Patna.
5. Principal, Government Sri Dhanwantri Ayurvedic College and Hospital, Ahirauli, Buxar.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 12066 of 2017

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Bishram Ojha, Son of Sri Radha Mohan Ojha, resident of Village- Balapur, P.S.-
Industrial Area, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Government of Bihar, Patna.
2. Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. Under Secretary, Department of Health, Govt. of Bihar, Patna.
4. Director General, Ayush Directorate, Department of Health, Government of Bihar, Patna.
5. Principal, Government Sri Dhanwantri Ayurvedic College and Hospital, Ahirauli, Buxar.
6. District Accounts Officer, Bhojpur at Ara.

.... Respondent/s

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Appearance :

(In CWJC No.12384 of 2016)

For the Petitioner/s : Mr. Shiv Kumar, Advocate

For the Respondent/s : Mr. Ranjay Kumar Singh, AC to SC-6

(In CWJC No.12066 of 2017)

For the Petitioner/s : Mr. Shiv Kumar, Advocate

For the Respondent/s : Mr. Manoj Kumar, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-03-2018

Heard Mr. Shiv Kumar, learned counsel appearing for the



petitioner in the two writ petitions, Mr. Ranjay Kumar Singh, learned Assisting Counsel to Standing Counsel No.6 for the State in CWJC No.12384 of 2016 (hereinafter referred to as the 'first writ petition') and Mr. Manoj Kumar, learned Assisting Counsel to Standing Counsel No.12 for the State in CWJC No.12066 of 2017 (hereinafter referred to as the 'second writ petition').

Since the relief claimed by the petitioner in the 'second writ petition' is dependent on the outcome of the 'first writ petition' that is how perhaps, vide order passed on 22.2.2018 in the 'second writ petition' it was directed to be heard analogous with the 'first writ petition' and that is how these cases are before this Court.

Before this Court would express any opinion on the rival claims raised, I deem it necessary to refer to some dates which would be relevant for arriving at a just conclusion on the issue debated.

The petitioner herein was appointed as a typist in Sri Dhanwantri Ayurved College, Ahirauli in the district of Buxar on 12.10.1981 and was confirmed in service on 1.2.1985. He was subsequently promoted to the post of Steno-typist on 7.5.1985. The college was taken over by the State Government with effect from 1.6.1986 vide notification bearing Memo No.840 dated 9.12.1986 and consequentially the service of the petitioner was absorbed in



the State Government along with others on 2.1.1992. The service of the petitioner was confirmed on 30.1.1993 but some dispute arose at that stage as to the initial appointment of the petitioner and some others and when these persons after being put on notice on 11.12.2002, followed by suspension on 25.3.2003 were ultimately terminated from the service vide order passed on 22.5.2003 with formal order being passed on 29.8.2003. Altogether 229 teaching and non-teaching employees of the college were terminated from service and the petitioner was one amongst them.

It is since after 2003 that the petitioner has been made to oscillate in between the State Government and this Court with his first challenge coming through CWJC No.12574 of 2004. A coordinate Bench of this Court vide judgment and order passed on 8.10.2009 present at Annexure 1 remitted the matter to the Principal Secretary for consideration of the issue raised and its disposal in accordance with law. The representation of the petitioner at Annexure 2 was rejected albeit for a different reason which questioned the educational qualification of petitioner on its veracity and which is present in the order of the Principal Secretary bearing Memo No.662 dated 30.7.2010 at Annexure 3. The petitioner again came before this Court in CWJC No.1748 of 2011 and which was heard by a coordinate Bench of this Court and vide judgment and



order dated 16.4.2014 the writ petition was allowed. The order of the Principal Secretary dated 29.7.2010 circulated vide Memo No.662 dated 30.7.2010 was quashed and the matter was again remitted.

Wisdom dawned on the respondents and the matter after being examined threadbare the mistake was corrected and the petitioner reinstated in service and consequentially the termination order bearing Memo No.254 dated 25.3.2003 was cancelled and the consequential notification No.839 dated 29.8.2003 together with the order bearing Memo No.136 dated 22.5.2003 of the Principal in so far as it concerned the petitioner were cancelled. The petitioner was reinstated on his post by maintaining status-quo ante and the words used in the order of reinstatement bearing Memo No.1156 dated 17.12.2014 of the Director, Indigenous Medicines reads as under:

“ यथास्थिति
पुनर्स्थापित किया जाता है।”

The order while reinstating also allowed notional benefits to the petitioner but his arrears has been denied on the principle of ‘no work no pay’. It is feeling aggrieved by this denial that the petitioner filed CWJC No.12384 of 2016 i.e. ‘first writ petition’ and since he was also being denied his increments as well as his entitlement to ACP/MACP benefits that the ‘second writ petition’



has been filed.

Mr. Shiv Kumar, learned counsel appearing for the petitioner in the two writ petitions has submitted that the order of reinstatement is a correction of own error by the respondents and a denial of the arrears of salary to the petitioner is an advantage drawn by them for their own folly. He submits that the petitioner draws his strength from the provisions of rule 12(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules') whereunder in cases of disciplinary proceeding, the statutory rule allows back wages on reinstatement of a delinquent. He submits that the case of the petitioner is on a better footing for it is not on adjudication of disciplinary case that the petitioner has been reinstated rather the reinstatement is on the realization by the respondents of their own mistake in terminating the service of the petitioner on non-est ground. He relies upon a judgment of the Supreme Court reported in **(2013)10 SCC 324 (Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya)** for such relief.

He submits that if the Court is persuaded with the relief claimed in CWJC No.12384 of 2016 i.e. 'first writ petition' the relief prayed by the petitioner in the 'second writ petition' would become consequential for the moment the benefit is given to the



petitioner in the form of arrears of salary, he becomes entitle to the relief claimed in the 'second writ petition'.

Mr. Ranjay Kumar Singh, learned Assisting Counsel to Standing Counsel No.6 opposing the petitioner on the arrears of salary, has relied upon the statement present at paragraph 6 and 8 of the counter affidavit to submit that on the principle of 'no work no pay' that the benefit has been denied. He also questions the writ petition on delay.

Mr. Manoj Kumar, learned Assisting Counsel to Standing Counsel No.12 while opposing the petitioner for his relief prayed in the 'second writ petition', has submitted that it is in reference to rule 85(क) of the Bihar Service Code that on seeking advice from the Finance Department it is decided that the petitioner is not entitled to increments.

I have heard learned counsel for the parties and I have perused the records.

The case has its own peculiarity because it is not by virtue of adjudication by the Court that the petitioner has been extended benefits rather it is on examination of the entire matter by the respondents themselves albeit after twice remand of the matter under the orders of this Court, that they have corrected their error to reinstate the petitioner after cancelling the order of termination.



Law is well settled on the issue and no sooner an order of termination is cancelled a position of status-quo ante is restored and the employee is restored to the same position on which he existed prior to the termination. As observed, the situation existing is not arising from an order passed on the judicial review rather this situation arises because the respondents on accepting the error, have issued the order of reinstatement dated 17.12.2014 which proceeds to cancel the termination order. The consequence of cancellation of termination order present in the notification No.839 dated 29.8.2003 and Memo No.136 dated 22.5.2003 in so far as it concerns the petitioner puts him in the same position in which he stood prior to passing of these orders. It is a natural corollary of such cancellation order that the petitioner would be become entitled to all the consequential benefits with effect from the date on which he had been terminated which would include the arrears of salary as well as continuity of service for the purpose of determination of his increment as well as ACP/promotional benefits.

Quite rightly analogy has been drawn by the petitioner in placing reliance on the provisions of rule 12(2) of the 'Disciplinary Rules' for if a delinquent has been held entitled to arrears of salary on his reinstatement under an order passed in appeal or any judicial forum the case of the petitioner is on a better footing for the



respondents having realized corrected their mistake by reinstating the petitioner on his post.

Paragraph 38.1 of the judgment relied upon by Mr. Shiv Kumar in the case of **Deepali Gundu Surwase** (supra) amply answers the proposition spelt out hereinabove when it held that in case of wrongful termination a reinstatement with continuity of service and back wages is normal rule. There cannot be worse case of wrongful termination than the case of the petitioner and which illegality stands corrected by the order dated 17.12.2014. The respondents cannot be allowed to gain advantage of their own folly to deny the consequential benefits to the petitioner in the form of arrears of salary and continuity of service for the purpose of promotion etc. thereby causing prejudice to his service career for which he cannot be held responsible.

Accordingly, this Court is persuaded with the argument of Mr. Shiv Kumar, learned counsel appearing for the petitioner to quash paragraph 4 of the order bearing Memo No.1156 dated 17.12.2014 of the Director, Indigenous Medicines impugned at Annexure 5 in the 'first writ petition' in so far as it denies the arrears of salary to the petitioner on the principle of 'no work no pay' and accordingly issue direction to the Director, Indigenous Medicines, Bihar, Patna and/or the authority concerned to make



payment thereof as also for providing him other consequential benefits including his increments, consideration of his case for ACP/MACP benefits as well as other service benefits found admissible, which obligation be discharged within a period of 3 months from the date of receipt/production of a copy of this judgment.

The two writ petitions are allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-04-2018
Transmission Date	NA

