

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2099 of 2016

In
Civil Writ Jurisdiction Case No.1314 of 2013

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Ram Briksh Sah, Son of Late Ramji Sah, resident of Village- Kanhauli
Bishundutt, Bela Imli Chowk, P.O.- R.K. Ashram, Bela, P.S.- Mithanpura,
District- Muzaffarpur.

... .. Appellant

Versus

1. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan,
East Gandhi Maidan, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog
Bhawan, East Gandhi Maidan, Patna.
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan,
East Gandhi Maidan, Patna.
4. The Executive Director, Bihar Industrial Area Development Authority,
Regional Office, Muzaffarpur.
5. The Officer-on-Special Duty, Bihar Industrial Area Development Authority,
Udyog Bhawan, East Gandhi Maidan, Patna.

... .. Respondents

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Appearance :

For the Appellant : Mr. Prashant Sinha, Advocate
For the Respondents : Mr. Piysh Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 18-04-2018

Heard counsel for the appellant and counsel for the
BIADA.

There are certain glaring facts which emerge which have
not been taken note of by the learned single Judge while
dismissing the writ application vide his order dated 29.09.2016.

By an office order dated 12.09.2005, the erstwhile
Managing Director of Bihar Industrial Area Development



Authority (hereinafter referred to as 'the BIADA') passed a gag order on the employees of BIADA that they will not make any communication with the State Government or the Directorate as if there was emergency imposed in the organization. Some of the employees, which included the present appellant, who were on the receiving end at the hands of a superior, raised a grievance before the Industrial Development Commissioner-cum-Secretary, Government of Bihar. The said representation is dated 22.08.2006, copy of which is Annexure-3 to the writ application. This representation was treated as a gross violation of the dictates of the erstwhile Managing Director and, therefore, a departmental enquiry was initiated. The primary charge was that the appellant was in violation of the office order. What was worth of such an order in a free democratic country is not for this Court to comment at this juncture, but what is of significance is that the enquiry officer did not find the appellant to be guilty of the charges.

Despite exoneration in the enquiry, without any notice of dissent, a punishment came to be imposed upon the appellant of warning as well as withholding of three annual increments with cumulative effect, passed by the Managing Director on 26.10.2007. This is Annexure-7 to the writ application. The appellant got dismissed from service after two years along with a



large number of other employees without following any procedure or law. Naturally, the Courts of law intervened and they were put back in service. In the year 2010, the appellant made a representation before the new dispensation, some steps were taken and then it was retraced.

It is accepted between the parties that at the relevant time the appellant was entitled to stagnation increments, which is granted once in every two years.

When the appellant approached the High Court against not only refusal to give him the benefit of stagnation increment, but also against the order of recovery, which was earlier granted, the learned single Judge taking a view that since the matter basically relate to initial order of punishment dated 26.10.2007, it is too late in the day in a stale matter to be interfered with.

Since the stoppage of three annual increments with cumulative effect has a life long fall out upon an employee, therefore, we are of the view that the grievance raised by the appellant before the writ Court should not have been dismissed on the ground of stale claim, because the employee continues to suffer from year to year because of the cumulative effect of the order.

Not only this, this Court fails to understand or appreciate as to how an order of punishment can be imposed by the Managing



Director without a notice of dissent when the enquiry officer did not find the appellant to be guilty in the very first place. This is again one of those examples where the Managing Director felt that he was law by himself. Irrespective of the finding by the enquiry officer, if he was bent upon punishing somebody, he will punish the person.

We are a country governed by rule of law and the rule of law applies to one and all. Be it the 'ruler' or the 'ruled'. Such gross abuse of power cannot be overlooked nor can it be allowed to stand when put under judicial scrutiny.

In the totality of the facts, we, therefore, hold that the order of punishment dated 26.10.2007 as well as the subsequent office order dated 06.12.2012 are all required to be quashed because the said orders are not only illegal but also irrational.

The appeal, therefore, stands allowed. The order dated 29.09.2016 passed by the learned single Judge in C.W.J.C. No. 1314 of 2013 is set aside. In view of what has been recorded by us, and due to quashing of the impugned order passed by the Managing Director dated 26.10.2007 imposing punishment, any decision taken as a consequence of the said punishment order detrimental to the interest of the appellant has to be treated to have been quashed and if any recovery has been made for increments



withheld after 26.10.2007 that will be paid back to the appellant within a period of three months from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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