

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10866 of 2011

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Chandra Ditya Nath Das, Late Raghunath Lal Das, Resident of Professor Colony,
Rambagh, P.S. - Purnea, District - Purnea.

.... Petitioner/s

Versus

The North Bihar Gramin Bank, Principal Office, Kalambagh Chouk, Muzaffarpur,
through it's Chairman.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sunil Prasad and
Mr. Neeraj Rai, Advocates.

For the Respondent/s : Mr. Prashant Vedsen and
Mr. Subhash Chandra Bora, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 08-02-2018

Heard learned counsel for the petitioner and learned
counsel representing the respondent Bank.

2. Petitioner in the present case is an employee of the
respondent Bank who, at one point of time, had been removed from
service on the basis of a letter of resignation dated 23.11.2000
allegedly submitted by him. At the relevant time he was also
subjected to a disciplinary proceeding by serving a memo of charge
contained in HO/DAW/255/2K-01/115 dated 20.10.2000. The letter
of resignation was accepted by the management of the Bank and the
resignation was given effect to from 01.12.2000 which was
communicated to the petitioner vide letter dated 24.11.2000 issued by
the management of the Bank.



3. The petitioner, however, questioned the acceptance of his resignation and filed a Writ Application before this Court giving rise to CWJC No. 9690 of 2001. Since the prayers made in the Writ Application filed by the petitioner are relevant for purpose of adjudication of this case, those prayers are being reproduced hereunder for a ready reference:-

“(i) To issue rule in the nature of certiorari to quash the letter vide memo No.H.O./PRS/2K-01/2297-dated 24.11.2000 and the order dated 4.7.2001 passed by the Chairman K.K.G.B., H.O. Purnea.

(ii) To issue rule in the nature of mandamus commanding the respondents to reinstate the petitioner in service and accept it to be from it's due date.

(iii) To grant any other relief or reliefs to which the petitioner is entitled.”

4. The Writ Application preferred by the petitioner failed; being aggrieved by the order of dismissal passed in CWJC No. 9690/2001, the petitioner moved this Court in LPA No. 47/2007. The issue before the Hon'ble Division Bench was as to whether the so-called resignation of the petitioner was rightly accepted by the management of the Bank even though the petitioner claimed that he had withdrawn the letter of resignation before it could have come into



effect. A Division Bench of this Court considered the issues arising out of the so-called letter of resignation submitted by the petitioner, revocation of the same by him and then acceptance of the resignation by the management of the Bank w.e.f. 01.12.2000. The Division Bench finally concluded as under:-

“In that view of the matter, this Court would set aside the impugned order passed by the learned Single Judge and would allow this appeal. The Bank’s letter dated 24.11.2000 purporting to accept a non existing resignation letter of the appellant-writ petitioner dated 23.11.2000 is quashed with a consequential direction for his reinstatement in service of the Bank and to that extent the prayer made in the writ application is allowed. The respondent-bank shall however be at liberty to pursue the disciplinary proceeding initiated against the appellant-writ petitioner vide memo of charge contained in HO/DAW/255/2K-01/115 dated 20.10.2000 in accordance with law.”

5. After the order of the Hon’ble Division Bench as aforesaid, the petitioner had been reinstated in service of the Bank and he retired w.e.f. 30.11.2013. Learned counsel for the Bank informs that the disciplinary proceeding which was initiated long back had, however, not been culminated finally. The petitioner submitted his joining on 03.12.2008 and since then he continued in the Bank’s



service before his retirement on 30.11.2013. The present Writ Application was filed after about 3½ years from the date of the order passed by the Hon'ble Division Bench in LPA No. 47/2007. In the present Writ Application, the petitioner has prayed for the following reliefs:-

“1. That, through this application the petitioner seeks indulgence of this Hon'ble court for issuance of an appropriate writ/writs, order/orders, commanding the Respondent to grant all salary for the period w.e.f. Dec 2000 to 2.12.05 the period from the date of termination of service and Reinstatement alongwith other benefit after the order and Judgment passed by this Hon'ble court in L.P.A. No. 47 of 2007 and grant any other relief or reliefs to which the petitioner is legally entitled.”

(‘2.12.05’ is a mistake and is required to be read as ‘2.12.2008’ as contended.)

6. Learned counsel for the petitioner submits that since the Hon'ble Division Bench allowed that acceptance of the resignation of the petitioner was not in accordance with law and the petitioner was found entitled to an order of reinstatement in service of the Bank, as a consequence thereof, the petitioner would be entitled for his full salary and emoluments for the period he remained out of service. The period during which the petitioner remained out of service is from 01.12.2000 to 02.12.2008 and, therefore, the petitioner is entitled for the reliefs prayed for in the Writ Application.



7. Learned counsel has relied upon a co-ordinate Bench judgment of this Court in the case of **Nawal Kishore Singh Vs. The Union of India & Ors.**, reported in 1992 (2) PLJR 225, as also the judgment of the Hon'ble Supreme Court in the case of **Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh & Ors.**, reported in AIR 1962 SC 1334 (V 49 C 200). It is submitted that on a reading of these two judgments it would appear that the Courts are consistent in their views that upon quashing of an order of removal the delinquent employee would be entitled for payment of his salary and emoluments for the period during which he remained out of service. Learned counsel also submits that the stand taken by the Bank in the present case that the petitioner would not be entitled to get his salary on the principle of “**No work-No pay**” is misconceived and would not apply in the facts of the present case when the petitioner remained out of service because of the wrong acceptance of his resignation letter. On these arguments, learned counsel for the petitioner has attempted to persuade this Court to grant the reliefs as prayed for in the Writ Application.

8. On the other hand, learned counsel representing the Bank submits that the fact that earlier the petitioner had moved this Court and prayed for not only a Writ of Certiorari to quash the letter of resignation but also a Writ of Mandamus directing the respondents



to reinstate him in service and accept it from its due date making it very clear that even before this Court initially the contention of the petitioner was that his resignation should have been accepted only from the date indicated in the resignation letter and not from 01.12.2000. Learned counsel further submits that in the Writ Application earlier filed before this Court the petitioner had one of the prayers to grant any other relief or reliefs to which the petitioner is entitled to but, upon consideration of the entire facts and circumstances, the Hon'ble Division Bench of this Court restricted the relief to the petitioner only to the extent of quashing of the Bank's letter dated 24.11.2000 purporting to accept the so-called resignation letter of the petitioner and then a consequential direction was issued by the Hon'ble Division Bench for his reinstatement in service. The fact that the Hon'ble Division Bench in its operative part of the order specifically said that **".... and to that extent the prayer made in the writ application is allowed"** making it very clear that the Hon'ble Division Bench was well aware of the other prayers made in the Writ Application by this petitioner but those prayers were not allowed and only in order to crystallize the thoughts of the Hon'ble Division Bench the order was qualified by saying that **the writ application is allowed only to that extent.**

9. In such view of the matter, it is the submission of the



learned counsel representing the Bank that now after 3½ years from the date of passing of the order by the Hon'ble Division Bench it is not open to the petitioner to raise this issue once again by filing the present Writ Application.

10. Learned counsel further submits that conferment of the salary and other emoluments for the period during which the petitioner remained out of service would not be automatic and law on this behalf has been well settled and has been reiterated times and again by the Hon'ble Apex Court. Learned counsel has relied upon a judgment of the Hon'ble Apex Court in the case of **P. Karupiah (D) thr. L.Rs. Vs. The General Manager, Thruuvalluvar Transport Corporation Ltd.**, reported in 2017(4) PLJR 320 (SC); Paragraphs 10, 11 and 12 of the said judgment have been relied upon which are being quoted hereunder for a ready reference:-

“10. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal / removal order is set aside / withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. [See **M.P. State Electricity Board vs. Jarina Bee (Smt.)**. (2003)6 SCC 141].



11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in appropriate cases the principle of “No work-No pay” while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case.”

11. Learned counsel, therefore, submits that in the circumstances under which the Hon’ble Division bench allowed the LPA of this petitioner and paved way for his reinstatement in service, it was very clear to the Hon’ble Division Bench that except the reinstatement in service, no other prayer was to be allowed and, therefore, the Hon’ble Division Bench had restricted the relief. The



petitioner remained out of service only because he himself indulged in creating controversy by writing the said letter of resignation.

12. Having heard learned counsel for the parties and upon perusal of the records this Court is of the considered opinion that the petitioner would not be entitled to the reliefs prayed for in the present Writ Application for the reasons that in the earlier Writ Application the petitioner had prayed for the consequential reliefs, as has been submitted by the learned counsel for the petitioner before this Court, but the Hon'ble Division Bench while deciding LPA No. 47/2007 restricted the reliefs prayed for by the petitioner to the extent of quashing of the Bank's letter dated 24.11.2000 and then by issuing a consequential direction for his reinstatement in service of the Bank. The order of the Hon'ble Division Bench clearly restricting the relief to the extent indicated in the order would give an impression to this Court that any other relief or reliefs prayed for by the petitioner in the Writ Application was / were not given to the petitioner and, only for that reason, the effect of the order was restricted to the extent it was allowed.

13. The contention of the learned counsel for the petitioner is that the consequential reliefs of salary and other emoluments will be deemed to have been made in the garb of the relief no. (iii) in the first Writ Application, if it is so, this Court would come to a conclusion



that the effect of the Hon'ble Division Bench's judgment would only be restricted to the extent it has been indicated in the order, and in such circumstance, the petitioner cannot be allowed to re-agitate the claim by filing the present Writ Application. In such circumstance the principle of *res judicata* would apply.

14. The contention of the learned counsel for the petitioner is that the consequential benefits by way of salary and other emoluments will be an automatic relief to the petitioner upon his reinstatement in service by virtue of the order of the Hon'ble Division Bench cannot be accepted by this Court for the reason that the Hon'ble Supreme Court has settled the proposition by now saying that such consequential benefits are not to follow automatically. The excerpts from the judgment cited on behalf of the respondent Bank which have been taken note of here-in-above reiterated the views expressed by the Hon'ble Supreme Court on this issue.

15. So far as the judgments cited on behalf of the petitioner is concerned, in the case of **Nawal Kishore Singh** (Supra) the petitioner had been placed under suspension and thereafter he was removed, the order of removal was quashed. The petitioner prayed for the consequential benefits but in that case the State failed to file a counter affidavit and, therefore, there was no contest in fact. In such circumstance, if a co-ordinate Bench of this Court allowed the



petitioner's salary for the said period, the same cannot be said to be a law laid down on the subject.

16. The another judgment in the case of **Devendra Pratap Narain Rai Sharma** (Supra), on which reliance has been placed, dealt with the effect of a statutory rule, the Hon'ble Supreme Court rejected the plea of the State with respect to the interpretation given to Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under the authority conferred under Article 309 of the Constitution of India. The Hon'ble Supreme court held that the said rule had no application to the cases, like the present one, in which the dismissal of a public servant was declared invalid by a Civil Court and he was reinstated.

17. Apparently, the facts of the present case are totally different and distinguishable from the cases cited on behalf of the petitioner and, therefore, what has been held in the facts of those cases would not apply with force in the case of the present petitioner.

18. In course of argument, a question also arose as to whether the petitioner has pleaded anywhere in the Writ Application that during the period he was out of service he had not been gainfully employed, this Court found that there is no such averment in the Writ Application. In the totality of the facts and circumstances of the case, this Court comes to a conclusion that the present Writ Application



seeks to re-open the issue of payment of salary and emoluments for the period 01.12.2000 to 02.12.2008, even though the petitioner had prayed for that relief in the garb of para (iii) of the prayer portion of the first Writ Application as is the stand of the petitioner himself.

19. This being the position, this Court refrains from exercising extra-ordinary writ jurisdiction under Article 226 of the Constitution of India to grant the reliefs as prayed for in the present Writ Application.

20. The Writ Application is devoid of any merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
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