

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8830 of 2015

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Ramjee Paswan S/o Late Kishun Paswan R/o Topkhana Bazar Katghar, P.S.
Kotwali, District- Munger.

.... Petitioner/s

Versus

1. Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan Birchand Patel Path, Patna.
2. Managing Director, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan Birchand Patel Patha, Patna.
3. Chief of Administration, Bihar State Food & Civil Supplies Corporation , Ltd. Sone Bhawan Birchand Patel Path, Patna.
4. Chief of Finance, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan Birchand Patel Path, Patna.
5. District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Munger.
6. Accounts Officer, Bihar State Food & Civil Supplies Corporation Ltd., Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhirendra Nath Jha, Mr. Ajay Kumar Jha, Mr. Chandrashebbhar Sharma and Mr. Aman Raja, Advocates
For the B.S.F.C.	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 29-06-2018

Heard learned counsel for the petitioner and Bihar State
Food and Civil Supplies Corporation Limited (hereinafter referred to
as the 'Corporation').

2. The petitioner has moved the Court for the following
reliefs:

*“i. The order dated 5.5.14 passed by
Respondent No.-2 Managing director through his
memo no.- 4243 dated 6.5.14 in back date contained
in Annexure- 15 rejecting the representation of the
petitioner for payment of entire Retiral benefits
including, gratuity, leave salary, entire salary from*



9.04.2002 to 13.06.2008 & due promotions, increment, difference amount of 6th pay commission from 1997 to 13.06.2008, etc. accrued to the petitioner.

ii. To direct the Respondent Authorities to make payment of entire Retiral benefits including, gratuity, leave salary, entire salary from 9.04.2002 to 13.06.2008 & due promotions, increment, difference amount of 6th pay commission from 1997 to 13.06.2008, etc. accrued to the petitioner

(iii) To grant such other relief or reliefs as deem fit and proper by issuing any appropriate writ, rule or direction/ directions. ”

3. The petitioner was an employee under the Corporation and due to charge of defalcation/embezzlement, he was placed under suspension and a departmental proceeding initiated against him which ultimately resulted in final order dated 31.05.2000, by which it was ordered that he shall be entitled to only subsistence allowance during the period of suspension, one yearly increment was stopped with cumulative effect, an amount of Rs. 299761.45/- was directed to be recovered and further Rs. 303566.78/- was also permitted to be recovered on account of loss in the godown. Later, the petitioner being accused in a criminal case, upon his conviction in Sessions Trial No. 193 of 1996 under Sections 302/34 of the Indian Penal Code on 27.11.1996, the Corporation by order dated 09.04.2002, dismissed him from service and further passed an order that for the suspension period only subsistence allowance shall be admissible and the remaining amount from Rs. 360857.45/- be recovered from



his pending salary, gratuity and other dues, on the basic defalcated amount interest at the rate of 18% be charged and adjusted from his payable dues and if the same could not be made good from the recovery, it be recovered by filing suit. The petitioner challenged the order dated 09.04.2002 in C.W.J.C. No. 11456 of 2002 which was dismissed by order dated 21.02.2008 with the observation that until the conviction is set aside, rightly it was decided by the Corporation not to retain the petitioner in service. It was further observed that if he succeeds in appeal or any other proceeding then matter can always be reviewed and petitioner's case may be considered for reinstatement. The Criminal Appeal (DB) No. 600 of 1996 filed by the petitioner was allowed by order and judgment dated 27th September, 2011. Based on the same, the petitioner represented before the authorities and the same was rejected by order dated 05.05.2014 contained in Memo No. 4243 dated 06.05.2014, which is under challenge in the present writ application. In the meantime, the petitioner had already attained the age of superannuation on 30.06.2008.

4. Learned counsel for the petitioner submitted that once the petitioner has been dismissed on the ground of his conviction in the criminal case in which he was later acquitted, the authorities are required to give him full benefit of his service period till his date of



superannuation by reinstating him. It was further submitted that even the order of award of 18% interest and recovery has been passed without giving any opportunity of hearing to the petitioner and, thus, the same is unsustainable and should be interfered by the Court. Learned counsel submitted that the petitioner having been acquitted, the reason for his dismissal goes away and, thus, the order of dismissal on this ground alone needs to be set aside and the petitioner should be reinstated in service. Before concluding the arguments, learned counsel for the petitioner submitted that at least for the purpose of retiral benefits, his total length of service till his date of attaining the age of superannuation i.e., 20.06.2008 should be counted.

5. Learned counsel for the Corporation submitted that the petitioner is precluded from assailing any of the punishments awarded by order dated 09.04.2002, except his dismissal, for the reason that he had already assailed the order in C.W.J.C. No. 11456 of 2002, which was dismissed with the only window available to him in terms of the observation made in the order itself that only upon his conviction being set aside, the matter can be reviewed and considered for reinstatement. Accordingly, it was submitted that the relief given against challenge to the order dated 09.04.2002 was only to the extent of consideration for reinstatement and not with regard to



any other punishment awarded in the same order which was not connected with the order of dismissal and would also not be affected by any order for reinstatement as the other punishment orders are not connected with dismissal on the basis of conviction in a criminal case and were distinct and separate punishment. It was further contended that even with regard to consideration for reinstatement, at the time when the Court had passed the order on 21.02.2008, the petitioner had not yet attained the age of superannuation and in that background, the Court had observed that upon success in the appeal, the matter can be reviewed with regard to reinstatement. Thus, learned counsel submitted that the petitioner after attaining the age of superannuation on 30.06.2008, after the passing of the order on 21.02.2008, there cannot be any question of reinstatement, moreso in view of the fact that at the relevant time of passing of the order of dismissal, the petitioner stood convicted till much after him attaining the age of superannuation and, thus, the authorities were *bona fide* and the reason was genuine and valid in law relating to dismissal as the conviction was subsisting even on the date of passing of the order and much beyond the petitioner having attained the age of superannuation. Learned counsel submitted that even if the petitioner has to be given the benefit of reinstatement, at most, he could be given the benefit of maintaining continuity in service till his date of



superannuation on a notional basis without being entitled to any actual payment of salary etc. on the settled principle of 'no work no pay'. Learned counsel submitted that even such exercise has been worked out by the Corporation and the chart brought on record by way of Annexure-B, in the supplementary counter affidavit filed on behalf of respondents no. 1 to 5, it would be clear that after counting notionally the said period, still a heavy amount is due and recoverable from the petitioner and there is absolutely no amount which the Corporation owes or is payable to the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition. The contention of learned counsel for the Corporation that when the order of dismissal and other punishments awarded to the petitioner on 09.04.2002 was under challenge in C.W.J.C. No. 11456 of 2006 and the writ petition was dismissed only with the observation relating to the matter be reviewed and considered upon the conviction being set aside only for the purposes of reinstatement, it shall be deemed in law that with regard to other punishments, the Court had not interfered and, thus, the said punishments stood confirmed. The petitioner not having moved against the aforesaid order dated 21.02.2008 in C.W.J.C. No. 11456 of 2002, either in appeal or in review with regard to non



interference in the remaining portion of the order beyond the order of dismissal, the issue now has attained finality and cannot be permitted to be reagitated by the petitioner, much less in the present writ application. Moreover, in the calculation sheet brought on record by the Corporation dated 22.07.2017, by way of Annexure-B to the supplementary counter affidavit, it is clear that even after counting of the period till June, 2008, huge amount is still recoverable from the petitioner. The Court finds that maximum which the petitioner could have got by order of the Court was benefit of continuity of service only notionally till his actual date of superannuation, which has already been computed in the aforesaid calculation chart, which indicates that still, as per the original order dated 09.04.2002, which has attained finality after challenge in C.W.J.C. No. 11456 of 2002, by order dated 21.02.2008, no amount is due and payable.

7. In view thereof, no relief can be granted in the present writ application and accordingly, the same stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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