

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1211 of 2016

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Md. Wasimuddin Son of Late Salimuddin Resident of Mohalla : - Raham Khan,
Post : - Lal Bag, P.S. : - Laheriya Sarai, District : - Darbhanga.

.... Appellant

Versus

1. The State of Bihar through the Industrial Development Commissioner, Industries Department, Bihar at New Secretariat, Patna.
2. The Director, Industries Department, Govt. of Bihar at New Secretariat, Patna.
3. The Chairman, Bihar Industries Area Development Authority Udyog Bhawan (East Gandhi Maidan), Patna.
4. The Managing Director, the Bihar Industrial Area Development Authority Udyog Bhawan (East Gandhi Maidan), Patna.
5. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan (East Gandhi Maidan), Patna.
6. The Executive Director, Bihar Industrial Area Development Authority Regional Office at Muzaffarpur/Bhagalpur.
7. The Executive Director, Bihar Industrial Area Development Authority Regional Office at Bhagalpur.
8. The Proceeding Officer, Bihar Industrial Area Development Authority Udyog Bhawan (East Gandhi Maidan), Patna.
9. The Placing Officer, Bihar Industrial Area Development Authority, Udyog Bhawan (East Gandhi Maidan), Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Mahesh Prasad Singh, Adv.
For the State : Mr. Shankar Kumar, AC to AAG-2
For the BIADA : Mr. Prashant Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 08-08-2018

Heard Mr. Mahesh Prasad Singh, learned counsel appearing
for the appellant, Mr. Prashant Pratap, learned counsel appearing for
the BIADA and Mr. Shankar Kumar, learned AC to AAG-3 for the
State.

The appellant is aggrieved by dismissal of his writ petition



bearing C.W.J.C.No. 3394/2014 by the learned Single Judge of this Court vide order passed on 17.3.2015 in refusing to interfere with the punishment order passed by the Managing Director of Bihar Industrial Area Development Authority (hereinafter referred to as 'the BIADA') in exercise of power vested in him as a disciplinary authority.

The appeal was admitted for hearing on 29.8.2017.

Facts as it transpires from the pleadings on record is that the petitioner was appointed on the post of Typist and was holding the post of Assistant when he was proceeded departmentally for alleged act of misconduct. The proceeding ended in an order of dismissal, a copy of which is enclosed at Annexure 7 to the writ petition and is dated 26.6.2007. The order was questioned by the petitioner before this Court through C.W.J.C.No. 15012/2008 which was heard analogous with other writ petitions and vide judgment and order passed on 5.5.2009 a learned Single Judge of this Court quashed the termination order with liberty to the respondents to proceed in accordance with law and also directed to consider the claim for back wages.

On remand of the matter, the proceeding was initiated and the Managing Director vide order passed on 18.6.2009, while allowing reinstatement of the petitioner, again put him under suspension with his Head Office at Muzaffarpur, a copy of which is



enclosed at Annexure 1.

The petitioner questioned the suspension order in C.W.J.C.No. 8755/2009. A learned Single Judge on hearing the parties vide order passed on 28.7.2009 issued direction to the respondents to conclude enquiry within four months, failing which the suspension order would stand revoked. A copy of the judgment and order of the learned Single Judge is enclosed at Annexure 9. Since the disciplinary proceeding did not conclude within the period stipulated that the respondents chose it to revoke the same vide order passed on 18.5.2010, a copy of which has been brought on record by Annexure 'A' to the counter affidavit filed on behalf of respondents no. 4 to 9 in the present appeal.

A plain reading of the order of revocation would confirm that despite being conscious of the pending disciplinary proceeding, the revocation order did not contain any stipulation as regarding payment of pay and allowance during the suspension period. The disciplinary proceeding concluded in the order of penalty of Censure vide order passed on 14.2.2012. Alongside came a direction for reduction of pay and allowance to the subsistence allowance drawn by the petitioner as well denial of increments during the period of his dismissal on 28.6.2007 until revocation of suspension on 18.5.2010.

The two orders passed in the case of the petitioner at



Annexures 8 and 9 gain relevance for consideration of the grievance raised. The petitioner was dismissed from service on 26.6.2007 which order of dismissal was quashed by a learned Single Judge on 5.5.2009 vide Annexure 8. While considering the claim for back wages the respondents were directed to consider the same and pass appropriate orders. Apparently no order was passed rather it is at the time of passing the punishment order impugned that a decision has been taken for its reduction to the subsistence allowance drawn.

The order of punishment bearing memo no. 956 dated 14.02.2012 is impugned at Annexure 2 series to the writ petition and the operative portion reads thus:

“16. चूँकि मो० वसीमउद्दीन एक लम्बी अवधि से इस प्राधिकार में कार्यरत है। अतः नरम रुख (Lenient view) लेते हुए पूर्व के सेवा वर्खास्तगी के वृहत् दंड की जगह निम्नांकित दंड देने का निर्णय संसूचित किया जाता है।

(i) निन्दन जिसकी प्रवृष्टि वर्ष 2007–2009 की उनकी चरित्र में की जायेगी।

(ii) निलंबन अवधि में उपस्थिति के अनुसार जीवन–यापन भत्ता के अतिरिक्त कुछ भी देय नहीं होगा परन्तु निलंबन अवधि की गणना देय भत्तों के प्रयोजन हेतु की जायेगी। निलंबन अवधि में वेतन वृद्धि देय नहीं होगी।

17. उक्त दंड के साथ एक बार और अपने व्यवहार एवं कार्य दक्षता में सुधार लाने एवं अनावश्यक पत्राचार कर कार्यालय कार्य में बाधा पहुँचाने हेतु हिदायत दी जाती है ताकि भविष्य में उनसे अदखता की शिकायत नहीं पायी जाय। इनकी कार्य पद्धति की निगरानी (Watch) की जायेगी।



18. सेवा बर्खास्तगी की तिथि 28.06.07 से 18.05.10 (निलंबन से मुक्ति की तिथि) तक की अवधि, उपादान एवं सेवा निवृत्ति संबंधित अन्य उपान्त लाभों हेतु निरनतरता (Continuity) के लिए परिगणित की जाएगी लेकिन वेतन वृद्धि के लिये नहीं।”

A plain reading of the order of penalty would confirm that the petitioner was visited with the following penalties:

(a) Censure for the years 2007 to 2009;

(b) Salary and pay and allowances during the suspension period was restricted to the subsistence allowance paid, while admitting notional benefits as found admissible; and

(c) No increments during the suspension period.

(d) The period from 28.6.2007 to 18.5.2010, though would be counted for post retiral benefits by providing continuity but not for increments.

The order of penalty of Censure for the years 2007 to 2009 has exhausted itself even prior to filing of the writ petition by the petitioner on 11.2.2014 and thus, we are certainly not persuaded to examine the correctness of the said decision.

The issue which falls for consideration before us is whether having examined the misconduct of the petitioner, where the disciplinary authority has chosen to impose a penalty of Censure which is at the lowest rung in the ladder of minor penalties, whether the disciplinary authority could have proceeded to impose a harsher



punishment on the petitioner as a consequential action to the disciplinary proceedings.

We have consciously reproduced the extract of the punishment order to demonstrate that while the punishment of Censure is a punishment under 'the Disciplinary Rules', the other impositions viz reduction of pay and allowances of the suspension period to the subsistence allowance drawn by the petitioner as well as denial of increment to the petitioner during the suspension period, even if, be a consequential action but it does not fall within the purview of punishments conceived under 'the Disciplinary Rules'. In other words, the impositions other than 'Censure', referred to above, are in the nature of executive action in contradistinction to the penalty of Censure.

We were informed by Mr. Prashant Pratap that wherever the Service Rules regulating the conditions of service of the employees of BIADA, is silent, it takes assistance of the Rules prevalent in the State Government viz Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules, 2005') as amended from time to time.

The relevant aspect of the matter is that the dismissal order of the petitioner passed on 26.6.2007, was quashed by the learned Single Judge on 5.5.2009 at Annexure 8 which was partially complied



on 18.6.2009 by allowing his joining vide Annexure 1 but no order was passed on the issue of back wages. The petitioner, though was allowed joining on 18.6.2009 vide Annexure 1 but was put under suspension by the same order, and which order of suspension was revoked on 18.5.2010 vide Annexure 'A' to the counter affidavit filed in the present proceedings, albeit in view of the order passed by a Writ Court at Annexure 9 to the writ proceedings. Even this order of revocation of suspension does not contain any stipulation regarding back wages.

In our opinion, the failure of the respondents to consider the claim of the petitioner for back wages at the time of accepting joining on 18.6.2009 vide Annexure 1 or even while revoking suspension on 18.6.2010 vide Annexure 'A', rather making it a part of the punishment order, besides being mechanical and bereft of reasons, is also in disobedience of the obligation cast in the directions of the learned Single Judge at Annexure 8 to the writ petition. Not having done so, having failed in their duty to discharge their obligation in the manner directed by the learned Single Judge at Annexure 8, the petitioner has become entitled to back wages on his reinstatement in the light of the position settled by the Supreme Court in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidhyalaya (D.Ed.) & ors., reported in (2013)10 SCC 324**



(paragraphs 21 and 22).

Even otherwise, in the very nature of punishment imposed by the disciplinary authority on the petitioner to censure him from a back date, it clearly reflects that the nature of misconduct identified is extremely minor and since an order of Censure does not take away any pecuniary advantage of the petitioner, the disciplinary authority cannot inflict a harsher punishment by an executive action while dealing with the period of suspension. If the disciplinary authority was satisfied on the misconduct, he was at liberty to impose a penalty of such nature but having let off the petitioner by a penalty of Censure, his right to draw salary for the period of suspension cannot be taken away. The order does not sustain the test of reasonableness nor the exercise of jurisdiction is based on sound reasons. The petitioner is held entitled to his back wages from the date of his dismissal on 28.6.2007 until his reinstatement on 18.6.2009 including the suspension period in question i.e. from 18.6.2009 to 18.5.2010.

In so far as denial of increment for the period 28.6.2007 until 18.5.2010 is concerned, the order again is silent on reasons, for such denial. In fact once the order of termination has been quashed by a Bench of this Court on 5.5.2009, the joining accepted on 18.6.2009 with the respondents themselves accepting continuity of service of the petitioner for the entire period in question, they cannot take away his



right to earn increments during the period 28.6.2007, which is the date of termination until his reinstatement and consequently the revocation of suspension on 18.5.2010. The claim of the petitioner to back wages having been upheld by us, it alongside entitles the petitioner to the increments found admissible to him.

In our view, the learned Single Judge while upholding the penalty of Censure has missed to consider the other parts of the punishment order which though do not form part of disciplinary action rather are in form of executive discharge, yet inflicts serious civil consequences, inasmuch as it takes away the right of the petitioner not only to the back wages but also to the increments found admissible to him.

This Court thus while upholding the view of the learned Single Judge on the issue of penalty of Censure would modify the order to the extent, the punishment order denies the pay and allowance to the petitioner for the suspension period as also takes away his right to draw increments for the period 28.6.2007 to 18.5.2010 which claim of the petitioner has been upheld by us. Let back wages of the petitioner during the period 28.6.2007 until 18.5.2010 be accordingly calculated together with increments found admissible thereon and after adjusting the amount already paid to the petitioner, let the balance be paid to him within a period of three



months from the date of receipt/ production of a copy of this judgment.

The order of the learned Single Judge passed on the writ petition is modified to such extent.

The Letters Patent Appeal is allowed to the extent above.

No order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.08.2018
Transmission Date	NA

