

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.360 of 2018
IN
Civil Writ Jurisdiction Case No. 15956 of 2013

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Udeshwar Kamti, S/O Late Maini Kamti, Resident Of Village & Post
Office - Haripur, Dih Tola, P.S. Kaluahi, District - Madhubani.

.... Appellant

Versus

1. The State Of Bihar, Through Principal Secretary, Department Of Industries, Government Of Bihar - Cum - Chairman, Bihar State Credit And Investment Corporation Limited.
2. Bihar State Credit and Investment Corporation Limited, Having Its Office Situated At Indira Bhawan, 4th Floor, Ram Charitra Singh Path, P.O. G.P.O., P.S. Srikrishnapuri, Town & District Patna, through Its Managing Director.
3. Managing Director, Bihar State Credit and Investment Corporation Limited, Having its Office Situated At Indira Bhawan, 4th Floor, Ram Charitra Singh Path, P.O. G.P.O., P.S. Srikrishnapuri, Town & District Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Manish Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-04-2018

Challenge in the present Letters Patent Appeal is to
the judgment dated 11.12.2017 passed by learned Writ Court
in CWJC No. 15956/2013.

2. The learned Writ Court has been pleased to
award 65% back wages to the petitioner, whereas petitioner
was claiming full back wages for the period 15.10.2004 to



22.09.2008 on account of his having been compelled to remain out of service due to his termination on the charge of misdemeanor which was later on set aside by this court in CWJC No. 9037/2005.

3. It is the contention of the appellant that in the departmental proceeding which was initiated against him for misbehaving with the female staffs as also for coming in the office inebriated state, threatening the co-employees, he was terminated from service. On a challenge made to the order of termination, this court vide order passed in CWJC No. 9037/2005 set aside the order of punishment holding that the procedure followed in the matter of departmental enquiry against the petitioner was unknown to law as no memo of charge was issued to him, no second show cause was issued and the punishment was imposed without holding proper enquiry. It appears that after the order of this court passed in CWJC No. 9037/2005, the enquiry was conducted and the petitioner was exonerated from all the charges which was accepted by the competent authority but while exonerating the petitioner from the charges, the management denied the salary for the period the petitioner remained out of job on the principle of “no work no pay”.



4. Before the learned writ court, both the parties relied upon an order passed by this court in CWJC No. 3725/2009 wherein the petitioner in the said case was granted 100% arrears of wages as it was held that the principle of “no work no pay” cannot be applied when the employee was ready to discharge the duty but the employer failed to take work from the employee, at the same time the respondents relied upon the judgment of Hon’ble Supreme Court in the case of **Babu Lal vs Haryana State Agricultural Marketing Board** reported in **2009 (4) SCC 287**; to submit that the grant of back wages lies within the domain of the employer and the court cannot substitute his opinion with regard to the entitlement of the back wages and in certain cases, the employer may refuse to grant benefit.

5. The learned Writ Court having appreciated the judicial pronouncements placed before the court distinguished the fact situation as appearing in the present case. The court found that the matter could have been remanded back for further consideration, but as the petitioner has already superannuated from service and remanding the matter for fresh consideration with regard to back wages will only extend the incarceration of the petitioner because he had already retired



much earlier in the year 2008 and the fact that he has not contributed in the corporation and during that period the petitioner must have been doing something for running his livelihood. On this distinction, the learned Writ Court allowed 65% of back wages to the petitioner.

6. In appeal before us, the learned counsel representing the writ petitioner submits that the learned Writ Court is not justified in allowing only 65% of the back wages. It is submitted that the petitioner is entitled for 100% back wages because in his case the order of termination has been set aside and he has been exonerated from all the charges.

7. Having heard learned counsel for the appellant and on perusal of the record, we find that while assailing the impugned judgment of the learned Writ Court, the appellant has not stated that he was not gainfully employed elsewhere during his period of termination. In our considered opinion, while seeking a claim of 100% back wages, the petitioner was required to make a specific statement in the writ application that during the period when he remained outside employment, he was nowhere gainfully employed. In the writ application, which we have perused there is no such statement that the petitioner was not gainfully employed during the period of



termination, if it is so, the learned writ court in exercise of its discretion while granting relief to the petitioner under Article 226 of the Constitution of India decided to grant 65% of back wages, we do find any illegality or infirmity in the impugned judgment of the learned Writ Court. The Writ Court has given reason for exercise of his discretion, as it was found by learned Writ Court that the petitioner had superannuated in the year 2008 itself and sending the matter back to the employer for consideration on the question of back wages would have been a further incarceration to the writ petitioner. The ground taken by the appellant that the writ court has gone beyond the pleading is not a well founded ground. There is no pleading in the writ application that the petitioner was not gainfully employed.

8. In the circumstances stated above, we do not find any merit in the Letters Patent Appeal. It is, accordingly, dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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