

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14091 of 2018

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1. The Union of India through the Director General of Post, Department of Post, Govt of India, Dak Bhawan, Sansad Marg, New Delhi.
 2. The Deputy Director General (PAF), Department of Post, Govt. of India, Dak Bhawan, Sansad Marg, New Delhi.
 3. The Chief Post Master General, Bihar Circle, Patna GPO Campus, Patna.
 4. The Director Postal Services (HQ), Office of the Chief Post Master General, Bihar Circle, Patna GPO Campus, Patna.
 5. The Director of Accounts (Postal), Patna GPO Campus, Patna.
 6. Sri. S.C. Jha, Director of Accounts (Postal) Cum Disciplinary Authority, Patna GPO Campus, Patna.

.... Petitioners

Versus

Krishna Kumar Manjhi Son of late Tileshwar Manjhi Senior Accountant, Office of the Director of Accounts (Postal), Patna GPO Campus, Patna.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Addl. S.G.
Mr. Rajesh Kumar Verma, CGC
For the Respondent/s : Mr. M.P.Dixit, Adv.
Mr. S.K.Dixit, Adv.
Mr. Sanjay Kumar Chaubey, 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: 13-08-2018

We have heard Mr. S.D. Sanjay, learned Additional Solicitor General, who appears with Mr. Rajesh Kumar Verma, learned Central Government Counsel on behalf of the writ petitioners and Mr. M.P. Dixit, learned Counsel appearing for the sole respondent.

The petitioners herein are the Union of India and its Officers in the Department of Posts and who are aggrieved by the two



orders passed by the Judicial Member, Central Administrative Tribunal, Patna Bench, Patna. The first of the order impugned is dated 02.05.2018 passed in O.A. No. 050/00383 of 2018 impugned at Annexure-18 to the writ petition and the second order is dated 1.06.2018 passed in M.A. No. 50/241 of 2018 arising from the original application in question impugned at Annexure-19.

Mr. Sanjay, learned Additional Solicitor General, has been precise in his submission to invite the attention of this Court to the order passed by the learned Judicial Member, Central Administrative Tribunal in O.A. No. 050/00383 of 2018 dated 02.05.2018 to submit that even though the learned member has upheld the objection raised by the petitioners as to the availability of alternative remedy of statutory appeal to the respondent-applicant before the Tribunal and has accordingly directed the respondent-applicant to exhaust the said remedy of appeal but thereafter has committed a serious error of jurisdiction in staying the penalty order of dismissal until consideration and disposal of the appeal by the Appellate Authority.

Learned Counsel in reference to a judgment of the Supreme Court reported in **(2010)9 SCC 437 (Kalabharati Advertising Versus Hemant Vimalnath Narichania & Ors.)**, more particularly paragraph 22 thereof, submits that the legal position is very clear and the moment a Court withdraws from a jurisdiction, it should refrain



from passing any interim order. Proceeding further he submits that the illegality in exercise of jurisdiction has been perpetuated by the learned Judicial Member when taking note of the Miscellaneous Application filed by the respondent-applicant arising from the original application in question bearing M.A. No. 50/241 of 2018, she has proceeded to pass a second interim order of directing the petitioners to make payment of retiral dues of the respondent/ applicant within a week of the order which was passed on 01.06.2018 and is impugned at Annexure-19.

We have heard Mr. Dixit, learned Counsel appearing on behalf of the respondent-applicant on the issues raised by Mr. Sanjay, learned counsel appearing on behalf of the petitioners but no amount of argument would persuade this Court to uphold the illegal exercise of jurisdiction by the learned Judicial member, Central Administrative Tribunal, Patna Bench, Patna. It is long settled, that the moment a Court relegates an aggrieved party to the forum of alternative remedy and thus withdraws from the jurisdiction of the case, it should alongside restrain itself from passing any interim order on the inter-party merits so put up for contest. We would do no better than to reproduce the opinion of the Supreme Court as found at paragraph 22 of the judgment so relied upon by Mr. Sanjay, learned Additional Solicitor General, which reads under:



“22. It is settled legal proposition that the forum of the writ court can not be used for the purpose of giving interim relief as the only and the final relief to any litigant. If the court comes to the conclusion that the matter requires adjudication by some other appropriate forum and relegates the said party to that forum, it should not grant any interim relief in favour of such a litigant for an interregnum period till the said party approaches the alternative forum and obtains interim relief. (Vide State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12, Amarsarjit Singh v. State of Punjab, AIR 1962 SC 1305, State of Orissa v. Ram Chandra Dev, AIR 1964 SC 685, State of Bihar v. Rambalak Singh “Balak”, AIR 1966 SC 1441 and Premier Automobiles Ltd. V. Kamlekar Shantaram Wadke, (1976) 1 SCC 496).”

(Emphasis is supplied by us)

Clearly learned Judicial Member while passing the order on the original application has committed a serious error of jurisdiction in granting interim relief of stay of the dismissal order until disposal of the appeal by the Appellate Authority, which appeal was yet to be filed by the respondent-applicant and is stated to have been filed much thereafter on 12.05.2018 as informed by Mr. Dixit at the Bar.

The illegality in exercise of jurisdiction has been perpetuated by the learned Judicial Member in passing the order on the Miscellaneous Application so filed by the respondent-applicant



arising from M.A. No. 050/241 of 2018 whereby a direction has been issued to the petitioners herein to make payment of the retiral dues even when the appeal against the dismissal order is yet to be disposed of.

In our opinion, two serious errors of jurisdiction was committed by learned Judicial Member, Central Administrative Tribunal, namely:

(a) in passing an interim order staying an order of dismissal even after withdrawing from the jurisdiction of the case and in the process usurping a jurisdiction which exclusively lay with the Appellate Authority; and

(b) granting a final relief of payment of retiral benefit even when the dismissal order is yet to be tested on its merits.

In our opinion, each of the two orders put to challenge are not only a product of the error of jurisdiction but are also patently illegal because in the process the learned Tribunal has granted final relief to the applicant.

Accordingly the order dated 02.05.2018 passed by the learned Judicial Member, Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 050/00383 of 2018 in so far as it stays operation of the penalty order of dismissal is quashed and set aside. Consequentially, the order dated 01.06.2018 passed by the learned



Judicial Member in M.A. No. 50/241 of 2018 whereby direction is issued for making payment of retiral benefits of the respondent, is quashed and set aside. The Miscellaneous Application so filed on behalf of the respondent- applicant as a consequence of our order above is rendered infructuous and stands disposed of accordingly.

The writ petition is allowed.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Archana/ Surendra

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

