

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9688 of 2011

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Md.Wasimuddin, son of Late Salimuddin, Assistant Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna, presently posted At Biada Regional Office, Large Industrial State, Barari, Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Industrial Development Commissioner, Industries Department, Bihar, New Secretariat, Patna.
2. The Chairman, Bihar Industrial Area Development Authority at Udyog Bhawan (East Gandhi Maidan), Patna
3. The Managing Director, Bihar Industrial Area Development Authority at Udyog Bhawan (East Gandhi Maidan), Patna.
4. The Secretary, Bihar Industrial Area Development Authority at Udyog Bhawan (East Of Gandhi Maidan), Patna
5. The Chairman, Minority Welfare Commissioner, Old Secretariat, Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Prasad Singh, Advocate
For the State	:	Mr. Birju Prasad, G.P.-13
		Mr. Ravi Kumar, A.C. to G.P-13
		Mr. Amresh, A.C. to G.P.-13
For BIADA	:	Mr. Prashant Pratap, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-05-2019

Heard learned counsel appearing for the respective parties.

2. In this case, the petitioner is challenging the order dated 09.11.2009, passed by the Managing Director, Bihar Industrial Area Development Authority (for short “the BIADA”)



whereby and whereunder the petitioner has been deprived the salary for the period from 26.06.2007 to 24.05.2009.

3. This subject has already been deliberated and dealt with by the Division Bench in L.P.A. No. 1211 of 2016, in which the Court has found that deprivation of salary is an executive order, its effect is higher in degree of punishment than to the order of censure, held that though it is an order of punishment, but it is in the form of executive discharge, yet inflicts serious civil consequences, inasmuch as, it takes away the right of the petitioner not only to be back wages but also to the increments found admissible to him. The Division Bench upheld the view of the learned Single Judge, held that though this Court upheld the view of the learned Single Judge on the issue of penalty of censure would modify the order to the extent, that the punishment order denies the pay and allowance to the petitioner as also takes away high right to draw increments for the period 28.06.2007 to 18.5.2010, which claim of the petitioner has been upheld, and accordingly, directed the payment of back wages for the period from 28.06.2007 to 18.05.2010, also directed for calculating the same together with increments found admissible thereon after adjusting the amount already paid to the petitioner.



4. It will be proper to quote relevant portion of or the aforesaid judgment, which are as follows:-

“ 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.”

5. On perusal of the aforesaid order, itself shows that the relief which has been sought in the present case has already



been dealt with in L.P.A No. 1211 of 2016 and the petitioner has been granted the relief of arrears of salary including the entitlement of increment, but the Court has not granted the relief of damage and interest as has been claimed in the present case on account of delay and harassment. In a simple manner, the arrears has been granted without grant of relief of interest, if that benefit has not been given, now the petitioner cannot claim the same in the present proceeding. The claim of the petitioner is only limited to the interest and damage, falls under the mischief of constructive *res judicata*. Whatever the amount still the petitioner is claiming, he can approach to the authority for redressal of the grievance.

6. At this stage, learned counsel for the petitioner submits that the petitioner has already produced the order of the Division Bench before the concerned authority, but that order has not been complied with though he has not filed contempt petition. The probity lies upon the authority of the BIADA when the order has been passed unless they challenge the same, they must implement the order of this Court. Every time the authority must not compel the person to approach this Court for implementation of the order of this court, it may be proved to be luxury litigation costing the institution itself.



7. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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