

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14662 of 2018

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Harendra Pati Tripathi Son of Late Birendrapati Tripathi, resident of Village-
Belauti, P.S. Sahpur, District- Bhojpur.

... .. Petitioner/s

Versus

1. The Bihar State Cooperative Bank Limited
2. The Chairman, the Bihar State Co-operative Bank Limited, Ashok Rajpath,
Patna.
3. The Managing Director of the Bihar State Co-operative Bank Limited,
Ashok Rajpath, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra, Adv. Mr. Ajay Kumar, Adv.
For the Bank	:	Mr. Prashant Kumar, Adv. Mr. Nishi Nath Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

Date : 06-04-2021

Heard learned counsel for the petitioner and learned
counsel for the Bihar State Cooperative Bank Ltd. (hereinafter
referred to as 'the Bank').

The petitioner has filed the instant application for
quashing the memo no.2281 dated 20.6.2018 issued under the
signature of the Managing Director of the Bihar State
Cooperative Bank, Patna whereby and whereunder the
respondent-Bank rejected the representation of the petitioner for
payment of arrears of salary for the period from the date of
dismissal of the petitioner till the date of his retirement, for a
direction to the Managing Director of the Bank to pay to the



petitioner the arrears of salary for the said period from 6.3.2004 to 30.9.2012 and for other reliefs.

The case of the petitioner in brief is that he was appointed as Night Guard in the Bank in the year 1972 and continued to carry out his duties with full honesty and integrity to the satisfaction of the authorities of the Bank. Hearing about the tragic death of his son-in-law on 10.12.2003, under serious mental depression, the petitioner rushed to Ranchi on 20.12.2003. He could not even give information to his family, as a result of which his son filed a written report with the local Police Station on 28.2.2004 requesting that steps be taken for recovery of his father. The petitioner was treated by an eminent doctor/ psychiatrist and thereafter joined his duties at the Bank in January, 2004. Not having fully recovered he was again taken for treatment to Ranchi on 4.3.2004 and finally came back to Patna on 8.3.2004.

It is further case of the petitioner that he was apprised by his son about having been dismissed from service on 6.3.2004 by an order issued under the signature of the Managing Director of the Bank. He preferred an appeal before the Chairman, however as he did not get any relief, he moved this Court by filing C.W.J.C.No. 8130 of 2008 challenging the order of his



dismissal dated 6.3.2004. The writ application was allowed vide order dated 14.8.2014 (Annexure-4) and the order of dismissal was set aside. The petitioner filed a representation before the Managing Director of the Bank requesting for payment of arrears of salary including retiral benefits from the date of his dismissal i.e 6.3.2004 till the date of retirement i.e 30.9.2012. The Managing Director of the Bank vide letter dated 8.1.20015 asked the petitioner to reply as to why his claim for payment of salary for the intervening period be not rejected on the principle of 'no work no pay.' The petitioner submitted his reply and it was by order dated 20.6.2018 that the Managing Director of the Bank rejected the prayer of the petitioner for payment of his arrears of salary for the period from 6.3.2004 to 30.9.2012 on the principles of 'no work no pay'. It is against this order dated 20.6.2018 that the instant application has been preferred by the petitioner for the relief as stated above.

A counter affidavit was filed on behalf of the Bank. As per the case of the Bank, the petitioner was found guilty for unauthorized absence and was dismissed from service of the Bank on 6.3.2004. The said order of dismissal was challenged by the petitioner in C.W.J.C.No. 8130 of 2008, wherein, although the order of dismissal passed by the Managing



Director of the Bank was set aside, however it was held that as the petitioner had absented himself and had not appeared even after newspaper publication, he would not be entitled to back wages for the period he absented, unless and until the same is adjusted against any other leave. It was submitted that in compliance of the order of this Court, the petitioner was reinstated in service upto 30.9.2012 and for the period that he had absented himself from duty, on the principles of 'no work no pay', salary for the said period was not found admissible. It was submitted that the order dated 14.8.2014 passed in C.W.J.C.No. 8130 of 2008 not having been challenged by the petitioner, the petitioner was not entitled for any relief in the instant writ application as the issue herein had already been decided by the said order.

Having heard learned counsel for the parties and on going through the materials on record, it transpires that the fact not in dispute is that the petitioner had been dismissed from service by order dated 6.3.2004 passed by the Managing Director of the Bank, which was challenged by the petitioner in C.W.J.C.no. 8130 of 2008. The said writ application was allowed by order dated 14.8.2014 (Annexure-4) in the following terms:-

“9. In the facts and circumstances of the case, this writ application is allowed and the



impugned order of dismissal passed by the Managing Director of the Bank is set aside. However, as the petitioner absented himself and has not appeared even after newspaper publication, he would not be entitled to back wages for the period he absented, unless and until the same is adjusted against any other leave. However he would be entitled to any other admissible dues, which was pending prior to his unauthorized leave on 02.02.2004.

10. With the aforesaid observation, this application stands allowed.”

It may be mentioned here that on the request of the Court, learned counsel for the petitioner provided a photocopy of the relevant part of the writ petition of C.W.J.C.No. 8130 of 2008 and paragraph no.1 of the same is quoted hereinbelow for ready reference.

“1. That this is an application for issuance of a writ of certiorari for quashing the impugned order of dismissal issued under rep letter core no.7782 dated 06.03.04 issued by the Managing Director Bihar State Co-operative Bank Ltd. whereby and whereunder, the petitioner has been dismissal from the post of Night Guard inter alia the following:-

Reliefs

(a) The order issued under the reference no.- dated 06.03.2004 by the Managing Director be set aside whereby and whereunder the petitioner has been dismissed from the post of Night Guard of Bihar State Co-operative Bank Ltd.

(b) Respondents be directed to reinstate the petitioner in his service with all consequential benefits.”

From the facts stated hereinabove it would clearly be evident that the petitioner who was dismissed from service by



order dated 6.3.2004 challenged the said order in C.W.J.C.No. 8130 of 2008. From perusal of the prayer/relief sought for by the petitioner in the said C.W.J.C.No. 8130 of 2008 which is quoted hereinabove it would also be evident that besides challenging the order of his dismissal, the petitioner had also prayed for reinstatement in service with all consequential benefits. In the opinion of the Court, the consequential benefits prayed for in the said writ application was the arrears of salary for the period that the petitioner remained under dismissal. This Court by order dated 14.8.2014, while setting aside the order of dismissal held that as the petitioner absented himself and did not appear even after newspaper publication, he would not be entitled to back wages for the period he absented. This order not having been challenged by the petitioner in appeal, attained finality and the issue of payment of arrears of salary for the period that the petitioner remained under dismissal also stood concluded.

It is not the case of the petitioner that in terms of the said order, the period of his absence could have been adjusted against any other leave, as observed in the order dated 14.8.2014.

Thus in view of the aforesaid facts and circumstances,



issue relating to payment of arrears of salary for the period that the petitioner remained under dismissal having already been refused by this Court by its order dated 14.8.2014 wherein it held that the petitioner ‘would not be entitled to back wages for the period he absented’, the Court finds no merit in the instant application.

The writ application stands dismissed.

(Partha Sarthy, J)

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CAV DATE	
Uploading Date	7.4.2021
Transmission Date	

