

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10080 of 2011

1. Kiran Kumar Sinha Son of Late Rameshwar Prasad Resident Of Village-Dharampur, Post- Duma Kali, P.S-Khaira, District- Jamui
2. Arbind Kumar Son of Shri Baleshwar Sharma Resident Of Village-Makarpur, P.S-Makhdumpur In The District of Jehanabad
3. Nawal Kishoe Prasad Son of Late Lakhan Prasad Resident Of Village- Baijnathpur, Post- Sarbahdi, P.S. in the District of Nalanda.
4. Uma Shankar Prasad Son of Late Aditya Prasad Resident Of Village- Imamganj, P.S- Rahui In The District Of Nalanda.
5. Smt.Geeta Kumar Singh Wife of Late Sabhapati Singh Resident of Village-Haraspura, P.S- Bainyapur In The District Of Chhapra.
6. Baleshwar Ram Son of Late Fudeni Ram Resident of Village Post-Sutpura, P.S-Goraul In. The District Of Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar, Through The Principal Secretary Cum Industrial Development Commissioner Industry Department, Government Of Bihar, Patna.
2. The Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna Through Its Managing Director.
3. The Managind Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Est Gandhi Maidan, Patna.
4. The Secretary, Bihar Industrial Area Development Authority Udyog Bhawan, Est Gandhi Maidan, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18106 of 2011

1. Rameshwar Prasad Roy Son of Late Udai Roy Resident Of Raksa, Ward No. 3 , P.O. Raksa, Ward No. 3, P.O. - Raksa, P.S.- Karja, District- Muzaffarpur
2. Mahendra Singh Son Of Mathura Singh Resident Of Mohalla- Laxmi Narain Nagar, P.S.- Mithanpura, District- Muzaffarpur
3. Ashok Kumar Son of Late Rup Narain Lal Resident Of Maripur School Road, P.S.- Kazi Mohammadpur, District- Muzaffarpur
4. Arun Kumar Sinha Son of Late Nagendra Prasad Resident Of Mohalla-Mithanpura, P.S.- Mithanpura, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Industries, Govt. of Bihar, Patna.



3. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
4. The Managing Director, 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.

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10080 of 2011)

For the Petitioner/s : Mr. Sunil Kumar, Advocate
Mr. Ranjit Kumar, Advocate

For the Respondent/s : Mrs. Binita Singh, Advocate

(In Civil Writ Jurisdiction Case No. 18106 of 2011)

For the Petitioner/s : Mr. Prashant Sinha, Advocate

For the Respondent/s : Mrs. Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-07-2022

Heard learned counsels for respective parties.

In the instant petition, petitioners have prayed for the following reliefs:-

“(i) For commanding the respondents to make payment of arrears of salary due from 13.02.2008 to 22.06.2009.

(ii) Also to direct the respondent to make correction in the date of granting yearly increment as per the office order, contained in Memo no. 6491 dated 28.09.2010.

(iii) Also for any other relief/reliefs for which petitioners are found entitled in the eye of law.”

Petitioners and others services were terminated on 13.02.2008. Petitioners preferred appeal before the appellate authority in respect of challenge to the termination order dated



13.02.2008. Similarly situated persons whose services were terminated have invoked writ jurisdiction remedy. Their writ petitions were allowed on 21st April, 2009. During pendency of the petitioners' appeal before the appellate authority, the appellate authority followed the orders of the learned Single Judge dated 21st April, 2009 and proceeded to set aside the order of termination. When things stood thus, respondents-authority feeling aggrieved and dissatisfied with the order of the learned Single Judge dated 21st April, 2009 preferred LPA No. 742 of 2009. During the pendency of the LPA contesting respondents in those LPA gave a concession before the Division Bench to the extent that they are giving up arrears of salary during the intervening period from the date of termination till reinstatement. The same was recorded and LPA was disposed off.

In the light of these facts and circumstances, question for consideration is whether the petitioners are entitled to salary during the intervening period from the date of termination till their reinstatement or not?

Undisputed facts are that petitioners and others services were terminated on 13.02.2008. The petitioners have invoked remedy of appeal before the appellate authority. On the other hand, similarly situated persons invoked remedy of writ petition. Writ



petition No. 14837 of 2007 was allowed on 21st April, 2009. While setting aside the order of termination taking note of order dated 20.04.2009 read with other decisions of the various High Courts and Hon'ble Supreme Court the appellate authority proceeded to allow petitioners' appeal on 01.06.2009. The respondents-authority preferred LPA. During the pendency of the LPA contesting respondents therein gave a concession before the Division Bench to the extent that they are giving up arrears of salary from the date of termination till reinstatement the same was ignored and disposed off.

Undisputed facts are that petitioners were not parties to the writ petition or LPA. Therefore, the decision passed in LPA is binding on the inter parties and not the petitioners. Merely because contesting respondents of LPA matter that they gave concession to the extent that they are giving up arrears of salary during the intervening period of termination till reinstatement. The concession given by those Respondents in L.P.A. matter is not applicable to the petitioners for the reasons that they were not parties to the aforesaid proceedings in writ as well as LPA. Moreover, respondents-authority had a cause of action in denial of arrears of salary to the petitioners in questioning the appellate authority's order dated 01.06.2009 before this Court with reference to LPA decision and it was not invoked.



At this juncture, it is to be noted that salary of an individual employee is a service condition relating to individual. Similarly, some of the employees gave concession before this Court. Such concession are not binding on the petitioners.

In the light of these facts and circumstances of the case the petitioners have made out a prima facie case in respect of claiming arrears of salary during the intervening period from the date of termination dated 13.02.2008 till reinstatement. The same shall be calculated and disbursed

At this juncture, it is relevant to rely on Hon'ble Apex Court decision in the case of **Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras** reported In (1992) 3 SCC 1 held at para 10 reads as under:-

“10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no pro-



ceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.



We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”

In the aforesaid decision, Apex Court has dealt with what is the effect of quashing of an order, if an order is quashed or set aside then whatever the position as on the date of such order would be restored.



In the light of these facts and circumstances, the petitioners have made out a *prima facie* case. The concerned respondents are hereby directed to calculate arrears of salary in respect of each of the petitioners. The same shall be disbursed within a period of three months from the of receipt of this order failing which petitioners are entitled to interest @ 6% per annum on arrears amount.

With the aforesaid observations, both the writ petitions stand disposed off.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

