

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1211 of 2018

In
Civil Writ Jurisdiction Case No.12066 of 2017

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1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
 2. Principal Secretary, Department Finance, Government of Bihar, Patna.
 3. Under Secretary, Department of Health, Govt. of Bihar, Patna.
 4. Director General, Ayush Directorate, Department of Health, Government of Bihar, Patna.
 5. Principal, Government Sri Dhanwantri Ayurvedic College and Hospital, Ahirauli, Buxar.
 6. District Accounts Officer, Bhojpur at Ara.

... .. Appellant/s

Versus

Bishram Ojha, Son of Sri Radha Mohan Ojha, resident of Village- Balapur,
P.S.- Industrial Area, District- Buxar.

... .. Respondent/s

with
Letters Patent Appeal No. 1210 of 2018
In
Civil Writ Jurisdiction Case No.12384 of 2016

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. Additional Secretary, Department of Health, Government of Bihar, Patna.
3. Deputy Secretary, Department, of Health, Government of Bihar, Patna.
4. Director, Indigenous Medicine, Department of Health, Government of Bihar, Patna.
5. Principal, Government Sri Dhanwantri Ayurvedic College and Hospital, Ahirauli, Buxar.

... .. Appellant/s

Versus

Bishram Ojha, son of Sri Radha Mohan Ojha, resident of Village - Balapur,
P.S. Industrial Area, District Buxar.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1211 of 2018)

For the Appellant/s : Mr. Ajay Behari Sinha, G.A. 8
Mr. Suryakant Kumar AC to GA- 8

For the Respondent/s : Ms. Mayuri, Advocate

(In Letters Patent Appeal No. 1210 of 2018)



For the Appellant/s : Mr.Suryakant Kumar AC to GA- 8
For the Respondent/s : Ms. Mayuri, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-09-2023

1. Two appeals arise from a common judgment of the learned Single Judge. The common judgment was passed in two writ petitions, filed by the identical petitioners. CWJC No. 12384 of 2016 was filed against an order dated 17.12.2014 passed by the Director, Indigenous Medicine, Department of Health, Government of Bihar, wherein the writ-petitioner's salary and other benefits due between 23.05.2003 and 17.12.2014 was rejected on the principle of "No Work No Pay". CWJC No. 12066 of 2017 was filed for payment of salary and other benefits which would accrue to the writ-petitioner during the said period, if he were continued in employment, along with the annual increments and the eligible ACP and MACP, as is applicable to the service of the writ-petitioner.

2. The learned Single Judge, who considered the matter, relied on the judgment of the Hon'ble Supreme Court in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya; (2013) 10 SCC 324* to hold that the principle of



“No Work No Pay” does not apply when there is a wrongful termination; when on reinstatement with continuity of service back wages is the normal rule. It was found that there cannot be a worse case of wrongful termination than the case of the writ-petitioner and hence, the impugned order dated 17.12.2014 was set aside and the writ-petitioner found entitled to the entire salary and perquisites during the period he was out of service, with consequential increments and consideration of his case under ACP/MACP. The respondents, appellants herein, were also directed to pay the amounts within a period of three months from the date of receipt/production of a copy of the judgment.

3. The appeals itself were filed delayed and there is gross delay of 119 days. But for the file having moved from one desk to another, there is no satisfactory explanation provided for the delay caused. We also find that when the appeals filed in 2018 came up for consideration in 2020, for the first time, the Division Bench directed that the limitation would be considered at the time of admission.

4. On facts, it has to be noticed that the writ-petitioner was appointed as a Typist/Clerk in Sri Dhanwantri Ayurved College, Ahirauli, Buxar on 12.10.1981 and confirmed in service on 01.02.1985. The writ-petitioner was then promoted to



the post of Steno-typist on 07.05.1985 and later the College was taken over by the State Government with effect from 01.06.1986. The service of the writ-petitioner was absorbed in the State Government along with others on 02.01.1992 and confirmed on 30.01.1993. On some dispute raised as to the initial appointment of the writ-petitioner and some others, notice dated 11.12.2002 was issued followed by an order of suspension on 25.03.2003 and ultimate termination vide order dated 22.05.2003. A formal order is said to have been passed on 29.08.2003 and 229 teaching and non-teaching employees of the College were terminated from service. The writ-petitioner was one amongst them, who challenged the termination as illegal.

5. Twice in writ petitions, the matter was directed to be considered by the appropriate authority. At the earlier instance, the representation of the writ-petitioner was rejected on a totally different ground; which order of the Principal Secretary was set aside and again the matter was remanded. On the second remand, the Director, Indigenous Medicine, Department of Health, Bihar found the termination of the petitioner to be illegal and directed reinstatement by Memo No. 1156 dated 17.12.2014. It was after this that the writ-petitioner filed an application for pay and benefits during the period when



he was kept out of employment; that too illegally, which was rejected and which gave rise to the present litigation.

6. As we noticed at the outset, the learned Single Judge found that circumstances are identical to that of ***Deepali Gundu Surwase*** (supra). It was also observed that the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 enables back wages even in case of disciplinary proceedings against a delinquent. In the present case, there is no such disciplinary proceedings initiated and the subsequent reinstatement made after about 11 years clearly indicates that the writ-petitioner was illegally and arbitrarily terminated. It was emphasized by the learned Single Judge that the setting aside of termination was not by a Court but by the authority itself, who realized the folly committed at the earlier instance. By reason of the illegal termination, the writ-petitioner was kept out of employment for 11 years. We are in perfect agreement with the findings of the learned Single Judge and we find no reason to interfere in the appeals filed.

7. We affirm the order of the learned Single Judge setting aside the impugned order in CWJC No. 12384 of 2016 and fully endorse the further order passed in CWJC No. 12066 of 2017 granting the writ-petitioner the entire back wages on



reinstatement including benefit of annual increments and ACP/MACP wherever and whenever the writ-petitioner was so entitled.

8. Now, we come to the Delay Condonation Applications, which we found, had absolutely no satisfactory reason stated therein. The mighty State ought not to have behaved arbitrarily in the first place, by terminating the writ-petitioner illegally and at least when the illegality was realized and reinstatement was ordered, reparation should have been made, to assuage the hardship to which the writ-petitioner was put to unnecessarily. Casually and with abject levity, the writ-petitioner's claim for back wages was rejected and when a learned Single Judge directed payment of the entire back wages, including consequential benefits, the mighty State again dragged its feet over the matter and filed delayed appeals, which now are being considered by us.

9. We specifically queried the learned Senior Counsel who appeared for the State to tell us whether the amounts have been paid; which could not be answered by the learned Senior Counsel or the instructing counsel. We find no reason to condone the delay also.

10. We dismiss the appeals on merits and also on the



ground of no satisfactory reason having been put forth to condone the delay occasioned. We further direct payment of 6% per annum interest from the expiry of three months from the judgment of the learned Single Judge, till payment. We make it clear that if the entire amounts are already paid, when the appeals were pending before this Court, no interest shall run on the amounts paid.

11. We dismiss the appeals with the above directions.

12. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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