IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.148 of 2018
In
Civil Writ Jurisdiction Case No.269 of 2017

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1. The Board Of Directors, B I C I C O, 4th Floor-Indira Bhawan, R.C. Path, Patna-800001;
2. The Managing Director, Bihar State Credit and Investment Corporation Limited BICICO, 4th Floor-Indira Bhawan, R.C. Path, Patna-800001;
3. The Manager Administration, Bihar State Credit and Investment Corporation Limited BICICO, 4th Floor-Indira Bhawan, R.C. Path, Patna-800001;
4. Deputy Manager Administration, Bihar State Credit and Investment Corporation Limited BICICO, 4t Son of Late Khaleel Ansari, Resident of Haroon Nagar-2, Phulwari Sharif, Patna.

... ... Appellant/s

Versus

1. Arbind Kumar Verma and Anr Son of Sri Ramji Lal Verma, Resident of 3A, Chaturbhuj Complex, West Boring Canal Road, P.O. G.P.O. P.S. Sri Krishnapuri, Patna- 1.
2. The State of Bihar through the Principal Secretary Industry Department Govt. of Bihar.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kumar Ravish, Advocate
For the Respondent No.1	:	Mr. Subodh Kumar Sinha, Advocate
For the State	:	Mr. Rajeev Kumar Sinha, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 30-01-2023

Heard learned counsels for the respective parties.

2. Pursuant to our previous order dated 19.10.2022, Bihar State Credit and Investment Corporation Limited, Patna-Appellant passed an order dated 28.11.2022 stating therein that

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respondent is not entitled to salary and other allowances from 03.12.2002 to 18.02.2007.

3. It is undisputed that Respondent-Arvind Kumar Verma was dismissed/terminated from service with effect from 03.10.2002 on 03.12.2022, in other words, retrospectively his service were terminated and it was service matter of litigation in which order of termination was set-aside and matter was remanded to the Appellant-Corporation. The Appellant-Corporation did not pursue the matter in holding inquiry and complete the proceedings in terms of the directions of judicial order. Then what remains is how to regulate the intervening period from 03.12.2002 to 18.02.2007. Here, it is to be noticed that on 18.02.2007, Respondent-Arvind Kumar Verma was taken back to duty in the light of earlier order(s) of this Court.

4. In this backdrop, rejection of Respondent-Arvind Kumar Verma's claim for back wages during the intervening period from 03.12.2002 to 18.02.2007 vide Memo No. 382 dated 28.11.2022 is incorrect, for the reasons that termination /dismissal order dated 03.12.2002 with effect from 03.10.2002 is impermissible, in other words, retrospectively one cannot be punished. Assuming that order of termination is required to be given effect from 03.12.2002, even then the procedure known to

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the law has not been followed before order of termination. The same has been taken note of by this Court and set aside the order of termination dated 03.12.2002, in effect order of termination is not existing in the eye of the law. At the same time this Court had given liberty to the Petitioner-Corporation to hold an inquiry and proceed in accordance with law, the same has not been availed by the Petitioner-Corporation. Therefore, it is of the contention that in terms of decision in the case of ***Deepali Gundu Sarwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED and others) reported in (2013)10 SCC 324,*** the Respondent-Arvind Kumar Verma is not entitled to back-wages on the principle of "no work no pay". The aforesaid Principle cannot be applied in the present case, for the reasons that termination order itself is without following due procedure known to the law. Further, liberty granted by this Court has not been availed insofar as initiating inquiry and conclusion. At this juncture, it is necessary to take note of the Apex Court decision in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.***, reported in ***(1992) 3 SCC 1,*** Para-10 of which 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*

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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 proceedings 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. <u>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.</u> 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

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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.

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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."

(Under line Supplied)

5. The aforementioned principle laid down by the Apex Court is relating to what is the effect of quashing of an order. If an order is quashed, in that event, original position is restored. In the present case order of termination dated 03.12.2002 was set aside by this Court, in the result, original position stands restored as on 03.12.2002 to the extent that respondent-Mr. Arvind Kumar Verma would be in service. In the light of these facts and circumstances denial of back-wages to the Respondent-Mr. Arvind Kumar Verma by a letter/order dated 28.11.2022 is set-aside and the L.P.A. stands allowed.

6. The Appellant-Corporation is hereby directed to calculate arrears of the salary during the intervening period from 03.12.2002 to that 18.02.2007 and extend arrears of the monetary benefits within a period of three months from the date of receipt of this order, failing which, Respondent-Mr. Arvind Kumar Verma would be entitled to interest at the rate of 8% per

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annum in the light of the Apex Court decision in the case of ***Vijay L. Mehrotra v. State of U.P.***, reported in ***(2001) 9 SCC 687.***

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya/-

AFR/NAFR	
CAV DATE	NA
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