

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19779 of 2015

Subhash Singh Son of Late Jeonath Singh, resident of Village- Bishunpura,
P.S.- Bihta, District- Patna. Petitioner/s

Versus

1. The Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna through its Chairman
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
4. The Executive Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-01-2024

Heard Mr. Prashant Sinha, learned counsel appearing
for the petitioner and Mr. Avinash Kumar, learned counsel
appearing for the BIADA.

2. The present writ application has been filed for
quashing the Memo No.2241 dated 24.04.2012 passed by the
respondent No.2 by which respondent No.2 has rejected the claim
of back wages of the petitioner while the respondent No.1 did not
pass any order under Rule 97 of the Bihar Service Code. Further
prayer for a direction upon the respondent authorities to make
payment of back wages of the petitioner for the period from
03.11.2007 to 10.02.2012 i.e. the period during which the



petitioner was illegally remained under the compulsory retirement by an illegal order passed by the respondent No.2.

3. Learned counsel for the petitioner submits that the main question arising in the present writ application is that whether the respondent No.2 has passed the impugned order contained in Memo No.2241 dated 24.04.2012 and the respondent No.1 has not passed any order against the petitioner but the respondent No.2 passed an order rejecting the claim of the petitioner and as per Rule 97 of Bihar Service Code, the respondent No.2 was not competent to pass the impugned order which was not made by the respondent No.1.

4. The petitioner was working as routine clerk in BIADA vide Memo No.923 dated 30.04.2007 he was transferred as Area Incharge to Industrial Area, Buxar. While the petitioner was discharging as Area Incharge, Industrial Area, Buxar he has received two applications addressed to the Executive Director, BIADA, Patna, one was on behalf of the Unit named as Tractor Engineers wherein the three partners of the Firm had requested that they are unable to run their unit. In that view of the matter, they may be allowed to transfer their Unit alongwith all the movable and immovable assets to one Minakshi Industries. Learned counsel for the petitioner further submits that another



letter bearing No.266 dated 06.09.2007 which was also addressed to the Executive Director, BIADA was written by one Arun Kumar Mishra who was Proprietor of M/s Minakshi Industries who also requested for transfer of M/s Tractor Engineers on his name as Mr. Arun Kumar Mishra was ready to establish a Unit for electric Pole and Railway Sleeper. Petitioner being the Incharge of the Industrial Area, Buxar has forwarded the letters submitted by M/s Tractor Engineers and M/s Minakshi Industries to the Executive Directors, BIADA. In his letter, he has discussed the proposal given by both the Firms with a note at the bottom of the letter “ Thus, in the given situation, if it is acceptable, then consideration may be made for transferring the land A-9, Area 1400 S.Ft. Allotted to M/s Tractor Engineers to M/s Minakshi Industries”.

5. It appears from the aforesaid, the petitioner was never made any proposal for transferring the land as desired by the Executive Engineers it was just a forwarding letter wherein entire matters was depending upon the discretion of the Higher Authorities even the petitioner has not made any favourable recommendation for transferring the land. Thereafter, the petitioner was suspended vide Memo No.3889 dated 21.09.2007 issued by the respondent No.3 in contemplation of a departmental proceeding against the petitioner.



6. Learned counsel for the petitioner further submits that from a bare perusal of the plain reading of the suspension order, it is apparent that merely on the basis of the letter written by the petitioner, he was suspended and it has been alleged in the letter dated 21.09.2007 that the petitioner has committed gross irregularities and suppression of fact. Learned counsel for the petitioner further submits that after receiving of the letter dated 21.09.2007 the petitioner made a representation before the Secretary on 08.10.2007 he has stated in his letter that he had written in the word “ may be considered, if acceptable” and he was working as Area Incharge for the first time he might have committed some error, hence his suspension may be revoked. Learned counsel for the petitioner submits that the authorities concerned has ignored the explanation made by the petitioner, the memo of charge was served upon the petitioner vide Memo No.4414 dated 15.10.2007 and one Sri Ashok Kumar Singh, Development Officer was appointed as Inquiry Officer and all the charges were related to the alleged recommendation made by the petitioner regarding transfer of land from M/s Tractor Engineers to M/s Minakshi Industries. However, Charge No.4 was related to one explanation asked from the petitioner on 31.12.2005. The petitioner submitted his detailed explanation before the Inquiry



Officer on 22.10.2007. Learned counsel for the petitioner submits that the explanation submitted by the petitioner to be satisfactory, the respondent No.2 had directed to release of his salary for the month of December, 2005. Learned counsel for the petitioner submits that without providing a copy of the enquiry report and issuing a second show cause notice, the respondent No.2 vide his memo No.253 dated 03.11.2007, order for a punishment of compulsory retirement of the petitioner. The petitioner preferred an appeal before the respondent No.1 bearing Appeal No.100 of 2008 against the order of punishment contained in Memo No.253 dated 03.11.2007 his appeal was remained pending for almost two years then the petitioner filed a writ application bearing CWJC No.18332 of 2009 which was disposed of on 14.01.2010 with a direction to the Chairman, BIADA to dispose of the appeal preferred by the petitioner by which the respondent No.1 has dismissed the appeal vide order dated 18.01.2010 which was challenged by the writ petitioner in CWJC No.10507 of 2010. The writ application was disposed of vide order dated 08.07.2010. After hearing the parties, the Court has been pleased to set aside the order dated 18.01.2010 with a direction to decide the appeal preferred by the petitioner within a period of two months.



7. The respondent No.1 vide his order dated 03.02.2012 held that the order of compulsory retirement is disproportionate, hence, the punishment order dated 03.11.2007 was set aside and disposed of the appeal with an observation that the BIADA may issue a warning to the petitioner that in future if he repeats the mistake, his services will be terminated without issuing any show cause. Pursuant to the aforesaid order, the petitioner has given his joining on 10.02.2012 which was accepted with effect from 10.02.2012 and the petitioner was issued with a warning. Learned counsel for the petitioner submits that the petitioner was never in a gainful employment during the period he remained under compulsory retirement and the order of the respondent No.1 was totally silent on the issue of payment of back wages to the petitioner. Respondent No.2 vide his letter dated 01.03.2012 requested the Chairman to pass an order regarding the payment of salary of the petitioner from 03.11.2007 to 10.02.2012. In this regard, he has also placed his reliance upon Rule 97 (2)&(3) of the Bihar Service Code.

8. Learned counsel for the petitioner submits that the BIADA has filed a supplementary counter affidavit in which he has relied upon the certain judgment of the Hon'ble Supreme Court but the same is not applicable in the present case and he has



relied upon the judgment of the Division Bench of this Hon'ble Court vide order dated 08.08.2018 passed LPA No.1211 of 2016. The LPA Bench has allowed the claim of back wages of the BIADA employee and the order passed by the Hon'ble Division Bench has been upheld by the Hon'ble Supreme Court in SLP (Civil) Diary No.4801 of 2019 and warning is not the punishment under the CCA Rule so the respondent authority cannot pay the back wages of the petitioner.

9. Learned counsel for the petitioner submits that from a bare perusal of Rule 97(1) of the Bihar Service Code, it transpires that it is mandatory for the authority directing for reinstatement of the Govt. Service to pass specific order regarding the pay and allowances to be paid to the Govt. Servant for the period of his absence of duty and secondly the said period shall be treated as a period spent on duty. Rule 97(2) stipulates that where the authority is of the opinion that the Govt. Servant has been dully exonerated, the Govt. Servant shall be given full pay and allowances to which he would have been entitled. Rule 97(3) stipulates that in other cases, the Govt. servant shall be given such proportion of such pay and allowance as such competent authority may allow. Learned counsel for the petitioner submits that the respondent No.2 did not receive any order from the respondent



No.1 in response to his letter dated 01.03.2012 but suo motu he has passed an order contained in Memo No. 2241 dated 24.04.2012 whereby the respondent No.2 rejected the claim of the back wages of the petitioner relying upon the Supreme Court Judgment in the case of **Novartis India Ltd. Vs. The State of West Bengal** reported in **2009 (3)SCC124** and **MD, ECIL Vs. B. Karnakar** reported in **(1993) 4 SCC 727** and thereafter the petitioner has repeatedly represented before the respondent No.2 for payment of his back wages but no action was taken upon his representation and the petitioner was superannuated from his service on 31.07.2014.

10. Learned counsel for the petitioner submits that from the aforesaid it appears that the petitioner was wrongly awarded with the punishment of compulsory retirement for merely forwarding the letter of the two Units requesting for transfer of the land and the same was set aside by the respondent No.1 and in view of the provision contained in Rule 97 of the Bihar Service Code, the petitioner is entitled for back wages for the period from 03.11.2007 to 10.02.2012 and even the request of respondent No.2 the respondent No.1 has not passed any order under Rule 97 of the Bihar Service Code. Learned counsel for the petitioner has relied upon a judgment in the case of **Deepali Gundu Surwase Vs.**



Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors,
reported in **(2013)10 SCC 324** and he has referred paragraph-22 of
the said judgment which reads as follows:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter’s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These



sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

11. Learned counsel for the petitioner further replied upon a judgment in the case of **The Managing Director, Bihar**



Industrial Area Development Authority through its Managing Director & Ors. Vs. The State of Bihar & Ors reported in **2015(1)PLJR 419** and he has referred paragraph Nos.19 and 22 of the said judgment which read as follows:

“19. In his writ application, the writ petitioner-respondent No.3 herein relied upon Sub-rule (2) (ii) of Rule 12 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the CCA Rules”), which lays down as under :

“12. Treatment of service on reinstatement and admissibility of pay and allowances after dismissal, removal or compulsory retirement as a result of appeal.—

(1)xxx xxx xxx

(a) xxx xxx xxx

(b) xxx xxx xxx

(2) The Government Servant shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled, had he not been dismissed,



removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, in cases—

(i) xxx xxx xxx

(ii) where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate authority solely on the ground of non-compliance of the requirement of these Rules and no further inquiry is proposed to be held :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government Servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government Servant shall, subject to the provisions of sub-rule (7), be paid for the period



of such delay, only such proportion of such pay and allowances as it may be determined by him.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx ”

“22. Acceding to the submissions made, on behalf of the petitioner (i.e., respondent No.3 in the writ petition), the Court directed payment of back wages and also payment of salary for 22 days, which had been deducted, as already indicated above, by the order of the Managing Director, BIADA. The relevant observations, appearing in this regard, in the order, dated 12.03.2014, read as under :

“Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner contended that the petitioner was kept out of service during the period in question by virtue



of an order of compulsory retirement, which was held to be illegal, subsequently by a competent Appellate Authority. After the said order of compulsory retirement was set aside by the Appellate Authority, the BIADA neither initiated any disciplinary proceeding against the petitioner on the ground of any misconduct nor it chose to question the legality of the order of the Appellate Authority in accordance with law. He contends that there cannot be any valid and justifiable reason to deny the petitioner's back wages for the period during which he was kept out of service, because of an illegal order of compulsory retirement."

12. Learned counsel for the petitioner further replied upon a judgment in the case of **Bishwa Kalyan Ganguli Vs. The Chairman, Bihar Industrial Area Development Authority & Ors** reported in **2014(4) PLJR 544** paragraph No.12 of the said judgment which has already been quoted in the aforesaid case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors**, reported in **(2013)10 SCC 324 (Supra)**.



13. Learned counsel for the petitioner submits that in view of the aforesaid, the respondent No.2 was not competent to add something which was not in the order of respondent No.1.

14. Learned counsel for the BIADA, on the other hand, submits that in fact the Appellate Authority-respondent No.1 has set aside the order of compulsory retirement and directed to reinstate the petitioner in service, his direction to issue an order awarding punishment of warning to the petitioner and pursuant to the aforesaid order the joining of the petitioner was accepted with effect from 10.02.2012 and he was also issued punishment of warning and thereafter the respondent No.2 has passed an order contained in Memo No. 2241 dated 24.04.2012 whereby the respondent No.2 has passed an order with respect to the back wages of the petitioner issued by the Hon'ble Apex Court as well as based on the facts of the case. Learned counsel for the BIADA has relied upon the judgment of the Hon'ble Supreme Court in the case of **Novartis India Ltd. Vs. West Bengal & Ors.**, reported in **(2009)3 SCC 124** and **MDECIL Vs. B. Karunakar**, reported in **(1993) 4 SCC 727** to support the fact that the petitioner was not automatically entitled to payment of back wages and the arrears of salary for the period he was out of service due to dismissal. Apart from the aforesaid, learned counsel for the BIADA has relied upon



a judgment of the Hon'ble Division Bench vide order dated 08.04.2011 passed in LPA No.684 of 2010 holding that non-entitlement of the back wages and accordingly the order dated 08.03.2010 passed in CWJC No. 2389 of 2010 of the Hon'ble Single Judge was affirmed. He further relied upon a judgment of the order dated 27.08.2015 passed in CWJC No. 1053 of 2013 which was dismissed on 27.08.2015 in light of the order passed in the batch cases of LPA No.742 of 2009 and other matters vide order dated 10.08.2009 and the Civil Review No.35 of 2016 was also dismissed and in the present matter Special Leave Petition (Civil)(No.) 4801 of 2019 is still pending before the Hon'ble Supreme Court of India.

15. In view of the aforesaid, the respondent No.1 did not pass any order in terms of Rule 97 of the Bihar Service Code and respondent No.2 has passed the order in terms of Rule 97 of Bihar Service Code and in terms of Rule 97 of Bihar Service Code, the respondent No.2 was not competent to pass the order dated 24.04.2012 and the respondent No.1 has passed the order dated 03.02.2012 without giving any second show cause alongwith copy of the enquiry report, and as such the order dated 24.04.2012 and part of order dated 03.02.2012 are set aside and the writ application is allowed and the BIADA is directed to pay the arrears



of salary of the petitioner with effect from 03.11.2007 to 10.02.2012 within a period of three months from the date of receipt/production of a copy of this order.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2024
Transmission Date	NA

