

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8758 of 2012

MD. ZEYAUH RAHMAN S/O Late Noorul Ambeya R/O Mohalla-
Mithanpura, P.S.- Mithanpura, District- Muzaffarpur

... .. Petitioner/s

Versus

1. THE CHAIRMAN, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
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, Regional Office, Bihar Industrial Area Development Authority, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate.
For the Respondent/s : Mr. Bindhyachal Singh, Sr. Advocate.
Mr. Parth Gaurav, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-04-2024

Heard Mr. Prashant Sinha, learned counsel
appearing on behalf of the petitioner and Mr. Bindhyachal
Singh, learned senior counsel along with Mr. Parth Gaurav,
learned counsel for the respondents.

2. The petitioner has sought for the reliefs as prayed
for in Para-1 of the writ petition, which is, *inter alia*, reproduced
hereinafter:

*“(i) For issuance of a writ in the nature of certiorari
for quashing of Memo No. 2427 dated 07-04-2010 issued by
the Managing Director, Bihar Industrial Area Development
Authority (hereinafter referred to as BIADA only) whereby
the claim made by the Petitioner for the back wages along*



with C.P.F. for the period of February, 2008 to May, 2009, i.e., the period when the Petitioner remained wrongfully terminated, has been rejected in wrong appreciation of the judgement delivered by Hon'ble Supreme Court in the case of Novartis India Ltd. Vs. the State of West Bengal and others (2009) 3 SCC, 124 while this Hon'ble Court had directed the respondents to consider the claim of back wages of the Petitioner in accordance with the guidelines given by the Hon'ble Supreme Court in the aforesaid case.

(ii) For issuance of writ in the nature of certiorari for quashing of order contained in Memo No. 3891 dated 08-06-2010 whereby a minor punishment of censure has been awarded to the Petitioner with the only purpose to deny the claim of back wages to the Petitioner in as much as the punishment order confirms the order rejecting the claim of back wages and reliance has been placed upon the judgement of Hon'ble Supreme Court delivered in the case of M.D. ECIL Vs. B Karunakar (1993) 4 SCC 727. Needless to say that the M.D., BIADA was aware about the Supreme Court judgement in the B. Karunakar case and as such, in order to deny back wages to the Petitioner a minor punishment of censure has been awarded upon him, particularly when no misconduct was proved in the departmental proceeding.

(iii) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has filed the present writ petition praying to quash office order contained in memo No. 2427 dated 7/4/2010 of the Bihar Industrial Area Development Authority (in short the Authority/BiADA) by which the claim of back wages with CPF from the period February 2008 to May 2009, as a result of petitioner's termination from the service has been rejected in garb of punishment order dated 8/6/2010 by which 'censure' has been imposed in a departmental proceeding



in which charges were not proved against the petitioner. The petitioner has filed an interlocutory application bearing I.A. No. 7648 of 2013 for modifying the relief prayed in paragraph No.1 for directing the respondent Authority to pay him full salary for the period he had remained under suspension viz from 14.5.2009 to 22.11.2009 and also to pay him back wages for the above said period and to quash the enquiry report dated 5.4.2010 submitted in the departmental proceeding held against him.

4. Learned counsel submits that the petitioner was initially appointed as Steno typist in the erstwhile North Bihar Industrial Area Development Authority, Muzaffarpur vide order No. 616 dated 22.5.1976 on temporary basis. Vide order contained in memo No. 2405 dated 6.7.2007, a departmental proceeding was initiated against the petitioner and pursuant thereto by order contained in Memo No. 77 dated 6.2.2008 of the Authority, the petitioner was terminated from service. He further submitted that the petitioner challenged the above order of termination dated 6/2/2008, before the Hon'ble Court by filing C.W.J.C. No. 8412 of 2008 and the Hon'ble Court vide order dated 5/5/2009 was pleased to set aside the said order of termination and was further pleased to direct that insofar as the



claim of back wages of the petitioner for the period he remained terminated on account of the said termination order dated 6/2/2008 would be decided by the Authority in light of the law laid down by the Hon'ble Supreme Court passed in the case of **Novartis India Ltd. Vs. State of West Bengal and others**. He further submitted that in compliance of the above order dated 5/5/2009 of the Hon'ble Court, the petitioner was reinstated in service by office order bearing memo No. 2647 dated 19.6.2009 of the Authority and vide letter contained in memo No. 5861 dated 2/9/2009 of the Authority, the petitioner was called upon to produce relevant papers/evidence in support of his claim for payment of back wages for the period of termination i.e. February, 2007 to May 2009 and also for hearing to be held on 14/9/2009. The petitioner appeared on the date of hearing and had submitted his representation for his claim for payment of back wages. He further submitted that the claim of back wages of the petitioner for the period of termination i.e. February, 2007 to May, 2009 was not considered by the Authority taking into account the facts and circumstances of the case, as well as, the law laid down by the Hon'ble Supreme Court in the above judgment in the case of **Novartis India Ltd** (supra) and rejected vide impugned order contained in memo No. 2427 dated



7/4/2010.

5. He further submitted that, as stated above, the Authority apart from reinstating the petitioner back in service vide office order contained in Memo No. 2647 dated 19/6/2009 also decided to hold departmental proceedings afresh against him in view of the alleged nature of charges against him which had earlier led to him to be terminated and also placed him under suspension. It is submitted here that by office order No. 7416 dated 23/11/2009, the suspension of the petitioner was revoked. He further submitted that illegally departmental proceeding was initiated afresh against the petitioner vide memo No. 3293 dated 31/7/2009 for the three charges alleged therein which are the same charges on the basis of which earlier departmental proceeding was initiated against him vide memo No. 2405 dated 6.7.2007. He further submitted that the petitioner had submitted his reply to the memo of charge vide memo No. 3293 dated 31.7.2009 on 17/8/2009 before the enquiry officer. The enquiry officer after holding enquiry had submitted his enquiry report vide letter No. 2364 dated 6/4/2010, wherein he has found the three charge against the petitioner to have been established. Accordingly, a second show cause notice was issued to the petitioner under letter No. 2778



dated 21.4.2010 of the Authority along with a copy of the enquiry report and the petitioner on 14/5/2010 filed his reply to the same. He further submitted that the disciplinary authority had not considered the case of the petitioner on the basis of evidence on record and the defence of the petitioner where he has categorically denied all the three charges in spite of the fact that charges were not proved which he was informed vide office order No. 3891 dated 8.6.2010 that a punishment of 'censure' has been passed against the petitioner for the year 2007-2008 to be entered in his service book and further directed that as the petitioner had remained under suspension, he would be entitled only for suspension allowance, but the period of his suspension would be counted for calculation of allowances and it was also ordered that the period of termination being from 6/2/2008 to 25/5/2009 would be taken into account for calculation of gratuity, etc. and would be treated as a period of continuous duty.

6. *Per contra*, learned counsel appearing on behalf of the respondents submitted that it would be evident that the petitioner was denied his back wages and a punishment of 'censure' in accordance with law after following due process and taking into consideration his claim and defence on both



these aspects, hence no exception can be taken against the petitioner. He further submitted that the petitioner was appointed on purely temporary basis in the North Bihar Industrial Area Development Authority vide order No. 616 dated 22/5/1976 and it is not his case that the said respondent had not issued any order making his service permanent. He submitted that it is a settled law that in absence of any decision to make service of an employee permanent by the employer, mere continuance of him in service for a long period does not *per se* render his service to be a permanent service. Learned counsel further submitted that the charges of disobedience was found proved against the petitioner and the disciplinary authority is under obligation to impose punishment on the petitioner and the petitioner, thus, cannot claim that no punishment should be imposed on him if the charges against him were found proved or that any punishment imposed was only to deny back wages which claim in any view of the matter stood unchallenged till then.

7. Having considered the rival submissions made on behalf of the parties, the question arises whether after revocation of suspension, the claim of the petitioner for back wages at the time of accepting joining or even while revoking



suspension, the petitioner is entitled for the same?

8. In this regard, it is well settled that within the purview of punishment considered under the Disciplinary Rules, an imposition other than censure rendered are in nature of executive action in contradiction to the penalty of censure.

9. The Apex Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors.** reported in **(2013) 10 SCC 324**, has held that if any disciplinary authority is satisfied on the misconduct, he is at liberty to impose a penalty of such nature, but having let off the petitioner by a penalty of 'censure', his right to draw salary for the period of suspension cannot be taken away. In this regard, it is apt to reproduce Paragraph Nos. 21 and 22 of the said judgment, which are reproduced hereinafter:

"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstatement" means to place again (as in possession or in a former position), to restore to a previous effective state. As per



Black's Law Dictionary, 6th Edn., "reinstatement" means:

"To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed."

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 employee concerned, 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. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

10. Considering the fact that the petitioner who was removed from service on 06.02.2008 and was reinstated on 19.06.2009 and again for the purpose of departmental



proceeding suspended on the same day i.e. on 19.06.2009 cannot be denied his back wages.

11. I find that the respondents themselves have accepted the continuity of service and for that period they cannot take away the right of the petitioner to claim back wages and other consequential benefits.

12. In these circumstances, the case is remanded back for reconsideration by the Disciplinary Authority who shall dispose of the representation of the petitioner within a period of eight weeks from the date of communication of this order.

13. The writ petition, accordingly, stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.05.2024
Transmission Date	N.A.

