

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8677 of 2023

Raj Nath, Son of Kuldip Prasad, Resident of Village- Ishapur (Ajnaura), P.O. Ajnaura, P.S.- Noorsarai, District- Nalanda.

... .. Petitioner

Versus

1. The Employees State Insurance Corporation through the Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
2. The Joint Director (Recruitment), Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi- 110002.
3. The Additional Commissioner and the Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
4. The Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
5. The Deputy Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad (Gujrat)- 380014.
6. The Joint Director I/C, Employees State Insurance Corporation, Sub-Regional Office, ESI Corporation, Surat, 395001.
7. The Additional Commissioner and Regional Director, Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, 5/1, Grant Lane, Kolkata- 700012.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-08-2024

In the instant petition, petitioner has prayed for the following reliefs:-

“i. For issuance of an appropriate writ/s, order/s, Direction/s for quashing order dated 01.08.2019 passed by Division Bench



consisting of Hon'ble Shri J.V. Bhairavia, Member [J] and Hon'ble Shri Dinesh Sharma, Member [A] of Central Administrative Tribunal Patna Bench, Patna in O.A. No. 050/00824/2018 whereby and under the original application filed by the petitioner has been dismissed being devoid of merit which was filed for quashing termination order dated 18.09.2018 which has been issued without any regular departmental proceeding;

ii. For issuance of an appropriate writ/s, order/s, Direction/s for quashing order dated 18.09.2018 whereby and under the petitioner's service has been terminated contrary to the provisions of law and without holding any regular departmental inquiry under Rule 14 of CCS (CCA) Rules 1965 which was mandatorily required since the petitioner was appointed after due process of law and have completed more than six years of service satisfactorily.

iii. For issuance of an appropriate writ/s, order/s, Direction/s to reinstate the petitioner in service forthwith with all consequential benefits including arrears of pay from the date of termination from service up to the date of reinstatement in service after setting aside the order dated 18.09.2018.

iv. To pass such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of this case.”



2. On 20.04.2024, we have passed the following order:-

*“Learned counsel for the respondents objected that the present matter is covered by decision rendered in CWJC No. 456 of 2024 in the case of **Bikash Kumar vs. The Employees State Insurance Corporation and others** insofar as delay and laches. He has pointed out CWJC No. 114 of 2024 in the Case of **Abhishek Kumar and others vs. The E.S.I.C. and others** dismissed on 09.04.2024. The present case could be dismissed in the light of **Abhishek kumar’s** case (cited supra) on the ground of delay and laches.*

*2. We have perused certain factual aspects of the matter namely CAT decided the matter on 01.08.2019 whereas the COVID - 19 period was in vogue during the period from 20.03.2020 to 22.03.2022 whereas petitioner has approached this Court in the month of May, 2023. Therefore, there is no laches. On the other hand, there may be a delay. Even if the delay is taken into consideration, reasonable period is three years. In the absence of stipulating limitation period in filing writ petition against the order of the CAT, hence, on facts of the case the present case is different from CWJC No. 114 of 2024 in the case of **Abhishek Kumar** (cited supra)*

3. At this stage, learned counsel for the respondents seeks time. Relist this matter on



06.05.2024.”

3. Respondents have filed counter affidavit.

Paragraph Nos. 12, 13 and 14 reads as under:-

“12. That it is stated and submitted that the Hon’ble Apex Court in a Suo Moto Civil writ no. 3 of 2020 passed an order on 08.03.2021 with regard to the condonation of limitation period but in the present writ application the order under challenge was already passed on 01.08.2019 and the petitioner had sufficient time to file writ application. The petitioner has not pleaded in his writ application about any difficulty in filing the present writ application immediately after 01.08.2019. Although the petitioner filed supplementary affidavit by which he took the plea of Covid 19 which took place w.e.f. March 2020. More over writ proceeding is not a suit and no limitation is specified in filing the writ application rather it should be filed within reasonable time. The Hon’ble Apex Court in the aforesaid Civil writ No. 3 of 2020 pleased to pass order to protect litigation having limitation prescribed under the statute.

13. That by the aforesaid order dated 08.03.2021 passed by the Hon’ble Apex Court in Civil writ no. 03 of 2020 suo-moto cognizance was taken to protect the litigants who had to file petitions/applications/suits/appeal within the



period of limitation as prescribed under general law of limitation or under special law.

14. That it is stated that it was opened for filling writ petition through online even during Covid period after intermittent breaks and even the virtual hearing was also conducted. The affidavit and stamps were exempted subject to an undertaking in the writ petition. Therefore, the petitioner cannot take advantage of the aforesaid order of the Hon'ble Supreme Court.

Para wise reply to the statement of supplementary affidavit filed by the petitioner.”

4. Having regard to the dates and events in the present case, in our order dated 20.04.2024, in para-2, we have explained that there is no laches on the part of the petitioner. On the other hand, we have also noticed there is a delay, however, delay would not be a hurdle for the reasons that there is no time limit stipulated for the purpose of filing writ petition against the order of the CAT. In the light of the Hon'ble Supreme Court Judgment in the case of ***L. Chandra Kumar V. Union of India & Ors.*** reported in (1997) 3 SCC 261. In L. Chandra Kumar Judgment issue was whether applicant before the Administrative Tribunal was required to approach directly to the Hon'ble Supreme Court or he should resort writ petition under Article 226 of the Constitution or not. In L. Chandra Kumar decision



the principle laid down therein was applicant who is aggrieved by the order of the Administrative Tribunal has to resort in filing writ petition under Article 226 and it is required to be heard by Division Bench. However, there is no time limit stipulated insofar as invoking writ jurisdiction against the order of the CAT. Therefore, one has to draw inference that reasonable period of time to file writ petition would be 03 years, if the same is taken into consideration, the petitioner has made out a case.

5. Learned counsel for the petitioner, on merits, submitted that in identical matter in C.W.J.C. No. 23977 of 2019, co-ordinate Bench has allowed the writ petition in favour of the employee.

6. Accordingly, the present Writ petition stands allowed in the light of the co-ordinate Bench decision dated 06.02.2023 passed in C.W.J.C. No. 23977 of 2019. The order dated 01.08.2019 passed by the Central Administrative Tribunal, Patna in O.A. 050/00824/2018 stands set aside and O.A filed by the petitioner stands allowed while quashing impugned action of the Respondents.

7. At this stage, learned counsel for the Respondent submitted that the present case is different for the reasons that in the cited decision he was promoted whereas in the present case



he was not promoted to that effect there is a distinction. Be that as it may, Annexure-P/3 termination order dated 18.09.2018 reads as under:-

No. 41.C.14/16/06/RN/18-E.I(Vig.)/189 Dated: 18.09.2018

ORDER

In pursuance of the Proviso to sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Chinmay Bose, Additional Commissioner & Regional Director, ESI Corporation, West Bengal Region in exercise of the powers conferred upon me hereby terminate the services of Shri Rajnath, MTS with immediate effect and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for a period of 1(one) months.

(C.BOSE)

ADDITIONAL COMMISSIONER &
REGIONAL DIRECTOR

To
Shri Rajnath, MTS
Budge Budge Branch Office,
ESI Corporation,
West Bengal
(Through the Branch Manager, Budge Budge Branch Office,
ESI Corporation, W.B)

8. Perusal of the same, it is evident that reasons have not been assigned as to why petitioner's services have been terminated. Off the record, learned counsel for the Respondent submitted that petitioner was involved in impersonation at the time of selection and appointment. To that effect, minimum requirement is holding of a domestic inquiry, in other words, if



the action is taken against the petitioner, it attaches stigma, therefore, departmental inquiry or domestic inquiry is warranted. In earlier case, we have already granted liberty to initiate inquiry and proceed further within the time limit stipulated, therefore, the same yardstick is applicable to the case in hand.

9. Writ petition stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2024
Transmission Date	NA

