

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12821 of 2012

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Ammini Amma B., wife of Shri G.K. Nair, Resident of 307, Nehru Nagar, P.S.
Patliputra, Town And District- Patna

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

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

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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 quashing the
Memo No. 7652/Estt. Dated 04.12.2009 issued by the Managing
Director, Bihar Industrial Area Development Authority (in short
BIADA for reference), the respondent no.3 as contained in*



Annexure-15 whereby and whereunder claim of petitioner for payment of back wages for the period 20.7.2007 to 21.05.2009 (22 months) i.e. the period when she had illegally been compulsorily retired, has been rejected under wrong interpretation of the judgment delivered by the Hon'ble Supreme Court in case of Novartis India Ltd. V/s The state of Bengal and others reported in (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 above referred case, while quashing the order of compulsory retirement vide judgment and order dated 5.5.2009 passed in C.W.J.C.No.12323 of 2007 along with analogous cases contained in Annexure-12.

ii) For issuance of writ in the nature of certiorari quashing the office order no. 1482/ Estt. Dated 11.3.2010 issued by the Respondent no.3 as contained in Annexure-16 whereby and where under while concluding the departmental proceeding initiated against the petitioner, beside entry in character roll she was denied full wages for the period she had been under suspension i.e. 18.06.2009 to 25.08.2009 awarding minor punishment.

(iii) For issuance of direction to pay arrears of entire back wages with interest.

(iv) For issuance of any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of this 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. 7652 dated 4/12/2009 of the Bihar Industrial Area Development Authority (in short the Authority/BIADA) by which the claim of back wages for the period from 21.07.2007 to 20.05.2009, as a result of petitioner's compulsorily retirement from the service has been rejected in garb of punishment contained in Memo No.1482 dated 11.03.2010 by which 'censure' has been imposed in a departmental proceeding in which charges were not proved against the petitioner. The petitioner has also prayed to direct



the authorities to pay her back wages for the above said period.

4. Learned counsel submits that the petitioner was initially appointed as Steno typist in the erstwhile Patna Industrial Area Development Authority, Patna vide order No. 418 dated 12.12.1975 on temporary basis. Vide order contained in memo No. 2406 dated 6.7.2007, a departmental proceeding was initiated against the petitioner and pursuant thereto by order contained in Memo No. 148 dated 16.07.2007 of the Authority, the petitioner was compulsorily retired from service with effect from 20.07.2007. He further submitted that the petitioner challenged the above order of compulsorily retirement dated 16.07.2007, before the Hon'ble Court by filing C.W.J.C. No. 12323 of 2007 and the Hon'ble Court vide order dated 5/5/2009 was pleased to set aside the said order of compulsorily retirement and was further pleased to direct that insofar as the claim of back wages of the petitioner for the period she remained compulsory retired on account of the said punishment order 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. 2644 dated 18.6.2009 of the Authority and vide letter contained in memos No. 5737 dated 28/08/2009 and 6180 dated 18.08.2009 of the Authority, the petitioner was called upon to produce relevant papers/evidence in support of her claim for payment of back wages for the period of compulsorily retirement and also for hearing to be held on 22/9/2009. The petitioner appeared on the date of hearing and had submitted her representation for her claim for payment of back wages. He further submitted that the claim of back wages of the petitioner for the period of compulsorily retirement, i.e., 21.07.2007 to 20.05.2009 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. 7652 dated 4/12/2010.

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. 2644 dated 18/6/2009 also decided to hold departmental proceedings afresh against her in view of the alleged nature of charges against her which had earlier led to her to be compulsorily retired and also placed her



under suspension. It is submitted here that by office order No. 5669 dated 26/08/2009, the suspension of the petitioner was revoked. He further submitted that illegally departmental proceeding was initiated afresh against the petitioner vide memo No. 3291 dated 31/7/2009 for the charges alleged therein which are the same charges on the basis of which earlier departmental proceeding was initiated against her vide memo No. 2406 dated 6.7.2007. He further submitted that the petitioner had submitted her reply to the memo of charge vide memo No. 3291 dated 31.7.2009 on 13/8/2009 before the enquiry officer. The enquiry officer after holding enquiry had submitted his enquiry report vide letter dated 2/12/2009, wherein he has found the four charges against the petitioner to have been established. Accordingly, a second show cause notice was issued to the petitioner under letter No. 7783 dated 11.12.2009 of the Authority along with a copy of the enquiry report and the petitioner on 23.12.2009 filed her 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 she has categorically denied all the four charges in spite of the fact that charges were not proved which she was informed vide office order No. 1482 dated



11.03.2010 that a punishment of 'censure' has been passed against the petitioner for the year 2007-2008 to be entered in her service book and further directed that as the petitioner had remained under suspension, she would be entitled only for suspension allowance, but the period of her suspension would be counted for calculation of allowances and it was also ordered that the period of compulsorily retirement being from 31.07.2007 to 20.05.2009 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 her back wages and a punishment of 'censure' in accordance with law after following due process and taking into consideration her 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 Bihar Industrial Area Development Authority vide order No. 418 dated 12/12/1975 and it is not her case that the said respondent had not issued any order making her 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 her in service for a long period does not *per se* render her 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 her, if the charges against her 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 “reinstate” 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 “reinstate” 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 “reinstate” 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 aforesaid facts, the petitioner cannot be denied her 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.

