

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2325 of 2020

=====

Jitendra Pd. Sharma Son of Ram Pyaray Sharma Resident of Hasanpura Road,
New Mahavir Colony, Phulwari, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary.
2. The Principal Secretary, Department of Finance, Govt. of Bihar.
3. The Principal Secretary Department of Environment and Forest, Govt. of Bihar, Patna.
4. The Chairman Bihar State Pollution Control Board, Beltron Bhawan, Bailey Road, Patna.
5. The Member Secretary, Bihar State Pollution Control Board, Beltron Bhawan, Bailey Road, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Ms. Anju Mishra, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh (Aag13)
For the Board	:	Mr. Abhimanyu Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 05-04-2024

Heard learned counsel for the petitioner, learned
counsel for the Bihar State Pollution Control Board and learned
counsel for the State.

2. The present writ petition has been filed for
grant of following reliefs:-

a. For setting aside /quashing the condition no 1,
2 and 3 as imposed vide office order No. 166 dated 11/12/2018
which is in sheer contravention of settled legal proposition and
service jurisprudence.



b. For directing the respondents to disburse the salary of the petitioner for the period 28/04/2003 to 08/01/2015, i.e., from his illegal removal to his reinstatement.

c. For directing the respondents to contribute and disburse the EPF of the petitioner from May 2003 to 8/1 / 2015 .

d. For directing the respondents to compute and disburse the salary of the petitioner with 6th and 7th pay revisions as applicable.

e. For directing the respondents to disburse the Earned Leave and Gratuity of the petitioner after computation of his length of service from his initial joining in the parent organization.

f. For directing the respondents to disburse the pension of the petitioner after computation of his length of service from his initial joining in the parent organization.

g. For issuance of any other appropriate writ/s order/s or direction/s as the Hon'ble Court may deem fit and necessary in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that the petitioner has joined the respondent-Board on contractual basis with effect from 20.12.1988. Counsel submits that after two years of his joining he was appointed against the sanctioned



vacant post on ad hoc basis vide office order No.40 dated 20.02.1991. Counsel submits that though Board is an independent unit, but not drafted its own Service Rules and it was decided that the rules of State of Bihar shall apply upon the employees of the Board. Counsel submits that in the 68th and 69th of Board Meeting dated 07.07.2001 and 12.02.2002, the decision for the regularization of the petitioner with other similarly situated was taken. But prior to regularization the petitioner was removed from service vide order dated 28.04.2003. The petitioner has challenged the said order before this Hon'ble Court in CWJC No.4568 of 2003 and subsequently in L.P.A. No.242 of 2008. Counsel submits that vide order dated 19.07.2013 passed in LPA No.242 of 2008, the order of removal of the petitioner from the service was quashed and it has been specifically directed to the Board to reinstate the petitioner and other similarly situated persons with effect from 28.04.2003 i.e., from the date of termination. Counsel further submits that the Board has challenged the order passed in LPA No.242 of 2008 before Hon'ble Supreme Court in SLP No.29637 of 2013, but the said LPA was dismissed by the Apex Court vide order dated 18.12.2014 and the order passed by Hon'ble LPA Bench was affirmed. Counsel submits that finally



vide Office Order No.02 dated 08.01.2015, the services of the petitioner was reinstated on the same post with effect from 28.04.2003. Counsel submits that though the reinstatement of the petitioner was done since his removal was held as illegal by this Court, but his salary and other allowances for the said period with effect from 28.04.2003 to 08.01.2015 were not paid. Counsel for the petitioner submits that the reinstatement of the petitioner was made in 2015 in the scale of 9300-4200-34400, but the grade pay of 4200 was denied to him. He further submits that vide Office Order No.166 dated 11.12.2018, the services of the petitioner was regularized with other similarly situated persons (Annexure-4). Counsel submits that in the said letter of regularization there were three conditions imposed and those conditions were imposed to defy the direction of this Hon'ble Court as well as Hon'ble Supreme Court of India. Counsel submits that the petitioner is entitled for Gratuity, Earned Leave, PPF amount, benefits of 6th and 7th pay revision. Counsel further submits that especially condition No.II and condition No.III were imposed to stop the petitioner demanding any claim of the service relating to pecuniary benefits. By the action done by the respondent-Board the length of service has also not been properly calculated and pay fixation of the petitioner has been



made in wrong manner, which resulted into pecuniary loss to the petitioner. Counsel submits that in this regard the petitioner has filed representation before the Chairman of the Board as well as the Member Secretary and lastly the petitioner retired on 31.10.2019 from the Board.

4. In the light of his representation, the responsibility has come from the Member Secretary of the Bihar State Pollution Board, which has been annexed as Annexure-7. Counsel submits that the petitioner is entitled for the payment of full back wages and the benefits associated with his service after the order of reinstatement as the removal letter were set aside which resulted into continuity of service and back wages is the normal rule as according to law laid down in the case of **Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Others** reported in **(2019) 17 Supreme Court Cases 184**. In the background, the counsel for the petitioner submits that petitioner is entitled for all the reliefs made in the writ petition mentioned above.

5. Learned counsel for the State submits that so far as the payment of wages and other benefits relating to the petitioner is concerned, State has directly nothing to do in this matter as the petitioner is under administrative control of the



Board and the Board is independent unit in this matter to take a decision and comply the order passed by this Hon'ble Court as well as by Hon'ble Supreme Court of India.

6. Learned counsel for the Board, on the other hand, submits that the services of the petitioner has been regularized vide Annexure-14 with three conditions, one, two and three already mentioned in the said letter contained in Annexure-4 (Memo No.2255 dated 11.12.2018). Counsel submits that at the time of granting relief to the petitioner about reinstatement, there is no express direction by this Court for payment of the back wages. Counsel submits that whatever representation filed by the petitioner has been duly answered by the respondent-Board, which is contained in Annexure-7, which has not been challenged by the petitioner. Counsel further submits that he is also relying on the same judgment on which the petitioner is relying and submitting that the reply relating to continuity of service and payment of back wages is subject to rider that while deciding the issue of back wages. The adjudicating authority of the Court may take into consideration the length of service of employee/workman, the nature of misconduct, if any, found proved against the workman/employee, the financial condition of the employer and



similar other factors. Counsel further submits that in the light of the submissions made as well as as per the pleading made in the counter affidavit that the regularization of the service of the petitioner has been made only with condition that back wages shall not be paid to him and there was no specific direction by this Court to make payment of the back wages; rather only direction of quashing of the removal of the said letter is there in the LPA Court which has been affirmed by the Hon'ble Supreme Court in the SLP filed by the Board.

7. In the light of the submissions made by the parties and upon perusal of the records of the case as well as the decision on which the parties relied, the question which arises before this Court that whether in the light of the decision made by the LPA Bench, the petitioner is entitled for receiving the entire back wages with all attached benefits as demanded by the petitioner in the relief portion of the writ petition or not?

8. With a view to decide this issue, it is necessary to quote the relevant paragraph of the said judgment in which this Hon'ble Court has pleased to decide the same and the direction for quashing the removal order of the Board has been set aside. The operative part of the order passed in the case of Bishundeo Tiwari and others Vs. The State of Bihar in LPA



No.242 of 2008 is as follows:-

“25. It may be noted in this regard that the Board, apart from its being State under Article 12 of the Constitution of India is also a creation of Statute and is an independent and autonomous body capable of taking steps on their own as per the law governing the Board without any external pressure or influence. Hence, if any external pressure or influence is exerted on the Board against the provisions of law or the settled principles of law and such act is brought before the Court of law, it has to be set aside. These aspects of the matter have not been considered by the learned Single Judge in the impugned order dated 03.03.2008 passed in CWJC No.4568 of 2003.

26. In the said circumstances, this Letters Patent Appeal is allowed, the impugned orders are set aside and the reliefs claimed by the appellants in CWJC No.4568 of 2003 are allowed quashing the order of the Board dated 28.04.2003 and directing the authorities of the Board to reinstate the appellants to their respective posts with effect from 28.04.2003.



27. Since the earlier writ petition bearing CWJC No.2148 of 2003 filed by the appellants for regularization of their salaries was not considered on merit and was disposed of on 29.07.2004 due to the order of petitioners' removal dated 28.04.2003, the appellants or any other similarly situated persons would be entitled to again raise their claim for regularization before an appropriate forum.”

9. Subsequently, the said order of Hon'ble LPA Bench has been challenged in SLP No.29637 of 2013 which was finally dismissed on 18.12.2014 and the Board has issued Office Order No.02 dated 08.01.2015 by which the services of the petitioner and others were reinstated on their respective posts with effect from 28.04.2003 (Annexure-3). This Court upon going through Annexure-5 that the pay scale of the petitioner was fixed after regularization in the year 2018 with effect from 11.12.2018 with three riders, which is as follows: -

“1. उपरोक्त कर्मियों की सेवा कार्यालय आदेश निर्गत होने की तिथि से नियमित समझी जाएगी।

2. पूर्व की कार्य अवधि के लिए किसी भी प्रकार का वित्तीय लाभ देय नहीं होगा।

3. माननीय सर्वोच्च न्यायालय के



पारित आदेश के साथ पठित माननीय उच्च न्यायालय
पटना द्वारा पारित आदेश के आलोक में पुनः योगदान
की तिथि से सेवा अवधि की गणना की जायेगी।”

The judgment on which both parties relied is
Jayantibhai Raojibhai Patel (supra), paragraph 14 of the said
judgment reads as under:-

“14. The Court laid down the following principles to govern the payment of back wages : (Deepali Gundu Surwase case [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] , SCC pp. 356-58, para 38)

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was



gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of



reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].”

10. It transpires to this Court that Hon'ble Division Bench at the time of deciding the LPA has categorically directed the authorities of the Board to reinstate the appellants (including the petitioner) to their respective posts with effect from 28.04.2003. It means that there is entitlement of the petitioner for payment of wages as the removal letter has been quashed by this Court and also to grant all benefits for which the petitioner was entitled from that particular date and it ought to be continued. It is true that the petitioner was not regularized on 28.04.2003, but subsequently regularization was made on 11.12.2018 and in the said letter (Annexure-4) the second rider has been inserted by the Board is appears to be made in gross violation of the instructions made by this Hon'ble Court passed in LPA and, therefore, the condition-II made in Annexure-4 (Memo No.2255 dated 11.12.2018) is hereby set aside for the petitioner.

11. It also transpires to this Court that the period



of service calculated from the date of rejoining has also been made in violation of the order passed by this Court in LPA where it has been categorically stated that petitioner and others shall be reinstated with effect from 28.04.2003. Hence, condition-III of Memo No.2255 dated 11.12.2018 is also directed to be set aside for petitioner.

12. In view of this Court, the order passed by the LPA Bench has to be respected in its true spirit, meaning thereby, not only the salary rather the benefits, such as payment of PPF and other social welfare benefits attached to the salary of the petitioner has also been directed to be calculated and be paid. It is made clear to the respondent-Board that for the payment of other benefits which is attached and for which petitioner is entitled after regularization about which the representation has been filed and on the basis of which Annexure-7 has been issued has to be considered afresh. Annexure-7, i.e., letter No.1308 dated 19.10.2019, shall be of no use after passing order of this Court and, hence, this letter (Annexure-7) is also set aside. The petitioner is directed to file fresh representation along with order passed by this Court demanding all benefits about which this Court has expressed and other benefits for which the petitioner is not entitled but not



expressed by this Court within four weeks from today and respondent No.5, the Member Secretary, Bihar State Pollution Control Board, is hereby directed that the express benefits shall be granted to the petitioner within 90 days and on non-express benefits he shall take decision in the light of the representation made within the said period. It is made clear that election has been notified, therefore, the period of 90 days shall be counted from end of the election.

13. With this direction, the writ petition is allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2024
Transmission Date	NA

