

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1104 of 2025

In
Civil Writ Jurisdiction Case No.12211 of 2017

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Surendra Jha Son of Late Yugal Kishore Jha, resident of Bela Chhapra, Musahri, Sherpur, Urf Narayanpur Anant, P.S.-Mithanpura, District-Muzaffarpur.

... .. Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Govt. of Bihar, 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.
5. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Darbhanga.
6. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur.

... .. Respondents

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with
Letters Patent Appeal No. 1136 of 2025
In
Civil Writ Jurisdiction Case No.12211 of 2017

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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, Bihar Industrial Area Development Authority, Regional Office, Darbhanga.
5. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Muzaffarpur.

... .. Appellants



Versus

1. Surendra Jha Son of Late Yugal Kishore, Resident of Bela Vihar, P.S.-
Mithanpur, District- Muzaffarpur.
2. The State of Bihar.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1104 of 2025)

For the Appellant	:	Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. Shrish Anurag, Advocate Mr. Rohan Verma, Advocate Mr. Aniket Rai, Advocate Mr. Amar Kumar Singh, Advocate
For the State	:	Mr. Abbas Haider, SC-6
For the BIADA	:	Mr. Kumar Priya Ranjan, Dy. Retainer Mr. Sudarshan Bhardwaj, Advocate Mr. Sandeep Kumar, Advocate

(In Letters Patent Appeal No. 1136 of 2025)

For the Appellants	:	Mr. Kumar Priya Ranjan, Dy. Retainer Mr. Sudarshan Bhardwaj, Advocate Mr. Sandeep Kumar, Advocate
For the Respondent No.1:	:	Mr. Prashant Sinha, Advocate Mr. Shrish Anurag, Advocate Mr. Rohan Verma, Advocate Mr. Aniket Rai, Advocate Mr. Amar Kumar Singh, Advocate
For the State	:	Mr. Abbas Haider, SC-6

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE SMT. JUSTICE SONI SHRIVASTAVA
C.A.V. JUDGMENT**

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-07-2026

Both the Letters Patent Appeals, being L.P.A. No. 1104 of 2025 and L.P.A. No. 1136 of 2025 are being disposed of by this common Judgment, as both assail the same Judgment of the learned Single Judge, in C.W.J.C. No. 12211 of 2017, dated 14.10.2025.



2. The learned Single Judge, vide the impugned Judgment directed the respondent nos. 2 to 6 to pay 70 per cent back wages to the petitioner/appellant (in L.P.A. No. 1104 of 2025 and respondent in L.P.A. No. 1136 of 2025) for the period 01.12.2007 to 03.07.2014. The payment was directed to be made to the petitioner/appellant (*hereinafter for clarity - private appellant*) within a period of four months from the date of receipt/production of a copy of the impugned Judgment.

3. In L.P.A. No. 1104 of 2025 before this Court, the private appellant avers that, the impugned Judgment is liable to be set aside as instead of awarding full back wages, the learned Single Judge directed payment of only 70 per cent back wages, to the appellant, for the period 01.12.2007 to 03.07.2014. He seeks the setting aside of the Judgment and payment of 100% back wages for the aforementioned period.

4. The State appellants/respondent, in L.P.A. No. 1136 of 2025, assail the Judgment of the learned Single Judge on the ground that, while disposing of the Writ Petition, the learned Single Judge did not consider the fact that the private appellant, besides being a temporary employee; was prone to remaining unauthorisedly absent



from work, his service record was dissatisfactory and several show-causes had been issued to him. For the period in question, the BIADA has paid the entire dues to which the private appellant was entitled, on his superannuation, including gratuity, D.A. and leave encashment, he is thus not entitled to back wages of 70 per cent as ordered in the impugned Judgment, which is therefore liable to be set aside.

5. The brief facts that led to the dispute are summarized herein; The private appellant was initially appointed as Peon, vide Office Order bearing No. 1447, dated 09.05.1979, issued by the Managing Director, North Bihar Industrial Area Development Authority, Muzaffarpur. It is the case of the appellant that his appointment was temporary in nature initially, but subsequently, he was granted all benefits of Pay Revision and Promotion availed of by permanent employees. Upon the formation of the Bihar Industrial Area Development Authority (BIADA), he became an employee thereof. On 27.09.2007, a Memo of Charge was served upon him, pertaining to his unauthorized absence from work and remaining incommunicable to higher authorities on his mobile phone. The private appellant, on 03.10.2007, submitted his reply to



the memo of charge. It is alleged by the private appellant that, without information to him, regarding the fate of his response before the Enquiry Officer, he was served with Memo, dated 10.11.2007, whereby the Managing Director ordered his compulsory retirement, with effect from 30.11.2007. This order was impugned by him before this Court in C.W.J.C. No. 9420 of 2008. Vide its Judgment, dated 18.06.2014, the learned Single Judge allowed the Writ Petition with an observation that, the claim of back wages is to be considered in terms of the order, dated 05.05.2009 passed in C.W.J.C. No. 11196 of 2007. In the said Order of 05.05.2009 (supra), the Court had observed that, the claim of back wages was to be decided in accordance with the guidelines laid down in, **Novartis India Ltd. Vs. The State of West Bengal and Others**,¹. Pursuant thereto, the private appellant filed his representation on 03.11.2014, before the Managing Director, BIADA for payment of his back wages for the period 1st December, 2007 to 3rd July, 2014, who allegedly, sans an opportunity to the private appellant, issued Memo, dated 05.12.2014, rejecting his claim of back wages.

6. It was next contended that, the private appellant preferred a Writ Petition being C.W.J.C. No. 2129

¹ 2009(3) SCC 124



of 2015, challenging the order of the Managing Director, wherein the Court, vide order dated 03.02.2015, directed that the matter be decided on merits by the Appellate Forum. The Appellate Authority, viz; the Principal Secretary, Department of Industries, rejected the appeal, vide order dated 27.02.2017. The private appellant, thereafter, filed C.W.J.C. No. 12211 of 2017, assailing the order of the Appellate Authority and sought payment of full back wages, upon which the instant impugned Judgment dated 14.10.2025 was pronounced.

7. Learned counsel for the appellant contended that, the private appellant was compulsorily retired at the age of 52, and he was not gainfully employed during the period of his compulsory retirement. That, the Hon'ble Supreme Court in **Novartis India Ltd. Vs. State of West Bengal & Ors.** (supra) has held that, when a workman is terminated and remained unemployed during the period of termination, on reinstatement, he is entitled to his entire back wages. Strength was also drawn from the judgment in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.,**² regarding the non-payment of back wages, wherein the Hon'ble Supreme Court referred to the judgment of **Novartis India Ltd.**

2 (2013) 10 SCC 324



(supra). It is the further contention of learned counsel for the private appellant, that, the Managing Director erred in projecting the appellant as a temporary employee, even after 28 years of service. Admittedly, there is no order of the Organization granting him status of a permanent employee, nonetheless he was granted the benefits of Pay Revision and time bound promotion, like any other permanent employee, indicating an implicit admission of such status having been accorded to him. As the impugned Judgment failed to direct payment of full back wages, it is urged that, the impugned order be set aside and full back wages be ordered to be paid to the private appellant.

8. Repudiating the submissions of learned counsel for the private appellant and making out its own case, learned counsel for the State respondent, contended that, the decision taken against the private appellant was in consonance with the existing rules, besides the appeal was rejected by a reasoned order of the Appellate Authority. That, the appellant repeatedly remained absent unauthorisedly from duty were in vain and incommunicable. Besides being an indisciplined employee, he was also recalcitrant and failed to comply with the orders of the Superior Authorities.

9. Learned counsel for the BIADA, Respondent



No.6 in L.P.A. No. 1104 of 2025 and Appellants in L.P.A. No. 1136 of 2025, while briefly walking this Court through the facts of the case, contended that all payments have been made to the private appellant after he attained the age of 60 years, on 31.07.2016 and superannuated from service. No further payments accrue to the private appellant over and above those already made to him, therefore he is not entitled to any back wages, as erroneously ordered in the Writ Petition (C.W.J.C. No. 12211 of 2017).

10. We have given our anxious consideration to the submissions advanced *in extenso* by learned counsel for the parties. The only question for determination is whether the learned Single Judge erred in ordering payment of 70 per cent back wages to the private appellant in L.P.A. No. 1104 of 2025, when as per BIADA, all dues allegedly had been paid to him, while as per the private appellant the order ought to have been for payment of 100 per cent back wages and not merely 70 per cent.

11. While examining the averments and arguments put forth, apposite reference may be made to the decision in **Deepali Gundu Surwase** (supra), relied on by the Appellant/petitioner (Surendra Jha) where the Hon'ble Supreme Court in paragraph no. 22 *inter alia* held 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....

.....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.”

The Judgment deals with the dismissal of a permanent employee.

12. In *Bihar Industrial Area Development Authority and Ors. Vrs. Subhash Singh*,³ on which the



private appellant placed reliance, a Division Bench of this Court was considering a Letters Patent Appeal, against the order of the learned Single Judge. The learned Single Judge had allowed the Writ Petition and directed the BIADA to pay the arrears of salary of the petitioner with effect from 03.11.2007 to 10.02.2012, within the time stipulated in the Judgment. In the said matter, the Court was dealing with the compulsory retirement of the appellant by the Managing Director, vide order dated 03.11.2007. The order of compulsory retirement was found to be disproportionate to the offence which was set aside and the petitioner reinstated. The L.P.A. upheld the Judgment of the learned Single Judge.

13. In the context of back wages, in **Novartis India Ltd.** (supra), the Hon'ble Supreme Court *inter alia* held as follows;

"22. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right."

14. In **Navin J. Surti V. Modi Rubber Ltd.,**



(2004) 2 CLR 46, it was observed as follows:

“18 It cannot be forgotten that the order for payment of back wages has to be from the point of view of compensating the employee for the loss suffered during the time he was out of the employment and not a reward for having succeeded in establishing the action of termination of the service by the employer to be illegal.”

(Emphasis supplied)

15. However, in **Rajasthan State Road Transport Corporation, Jaipur Vrs. Phool Chand (Dead) through Legal Representatives**,⁴ relied on by the BIADA, the Hon'ble Supreme Court was of the following view;

“13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial, depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages are required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies, etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra.....

16. Similarly, in **M.P. State Electricity Board Vrs. Jarina Bee (Smt.)**,⁵ the Hon'ble Supreme Court observed as follows;

4 (2018) 18 SCC 299

5 (2003) 6 SCC, 141



"7. In P.G.I. of Medical Education and Research v. Raj Kumar' this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus: (SCC p. 57, para 9)

"9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

Again at para 12, this Court observed: (SCC p. 58)

"12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

17. In Jagbir Singh Vrs. Haryana State Agriculture Marketing Board and Another,⁶ the Hon'ble Supreme Court was of the following view, which gains importance in the instant matter;

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to

6 (2009) 15 SCC 327



be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

18. It is evident from a perusal of the catena of decisions referred to above, there are differing views regarding the percentage of back wages to be paid to the dismissed employee, who is reinstated and it can be culled out that the percentage of back wages to be paid is essentially left to the discretion of the Court, after it examines various factual circumstances of the case under consideration. There is no strait-jacket formula prescribed. A subjective view in such matters has therefore been permitted by the Judgments of the Hon'ble Supreme Court.

19. In view of the foregoing discussions, and considering the reasoned Judgment of the learned Single Judge, we do not find any ground to interfere with the findings therein, including the order of payment of 70 per cent of back wages to the private appellant.

20. Needless to reiterate that, in a Letters Patent Appeal against a Single Judge's order, interference is



warranted only when the impugned Judgment suffers from a manifest error, patent illegality or perversity. Where the Single Judge has given a reasoned Judgment, the Division Bench ought not to interfere simply because an alternative view is possible.

21. Both the appeals being L.P.A. No.1104 of 2025 and L.P.A. No. 1136 of 2025 stand dismissed and disposed of accordingly.

22. Interlocutory Application(s) in both Letters Patent Appeals, if any, also stand disposed of.

I Agree.

(Soni Shrivastava, J)

(Meenakshi Madan Rai, CJ)

shailendra/-

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