

(2008) 08 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 12116 of 2006

Ram Balak Ram

APPELLANT

Vs

The Bharat Wagon Eng. Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Citation : (2009) 1 PLJR 595

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ram Hridya Prasad, for the Appellant; Udayan Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the parties. Petitioner came to be dismissed from service of the respondents because he absented from duty without any authorization for long stretch of time. When the order of removal came to be challenged in CWJC No. 5519 of 2004 the same was set aside on the ground that no enquiry or show cause was issued to petitioner before the order in question came to be passed against him. The respondents were therefore directed to reinstate the petitioner immediately.

2. Normally when an order of termination is set aside to be illegal or invalid then the Court does allow the concerned employee to claim his salary or other benefits because setting aside the order relates back to the date of order and has effect of taking away the bite of the decision rendered against the employees. But in the present case learned Single Judge in his order dated 7.7.2004, which is Annexure-1 to the writ application, restrained himself from giving any order in favour of the petitioner in this regard. Besides reinstatement of services of the petitioner nothing else was ordered. In fact a liberty however was granted to the respondents to proceed in the matter in accordance with law and liberty was also granted to respondents that issue of salary for the period of absence shall be considered by the authority after issuing a show cause notice to him. This aspect

is evident from the last paragraph of the order in question. In other words learned Single Judge in the given fact was of a considered opinion that the petitioner would not be entitled to the benefit of salary and other allowance as a matter of course.

3. In terms of the order of learned Single Judge it seems that an enquiry has been held against the petitioner and in the enquiry the finding and material has come to be recorded against the petitioner and the respondents based on the findings instead of terminating the service of the petitioner afresh decided to retain him in service but as a measure of punishment salary for the period he was absent till his reinstatement was ordered not to be paid. Petitioner is aggrieved by the said order now in the present writ application.

4. Contention of learned counsel appearing on behalf of the petitioner is that he is entitled to the salary for those periods because it is a settled principle of law that whenever an order of termination is declared illegal then the consequence and the benefit will flow in his favour. In this regard he has brought few decisions in support of this proposition.

5. The Court does not dispute the legal proposition which has been urged by the petitioner but the question in the present case is whether in the given facts and also in view of the judicial order dated 7.7.2004 contained in Annexure-1 can the petitioner now be allowed to claim such benefit as a matter of course. In the opinion of this Court that is not so. If the learned Single Judge withheld the benefit for payment of salary to the petitioner or made it conditional while allowing the writ application, then it is not open for this Court to read something more on the order and grant a relief which was not granted at the threshold, at the relevant time.

6. Coming to the validity of the order contained in Annexure-2 the Court has no hesitation in recording that if this is the punishment the respondents came to impose upon him, despite wrong doing having been established then the petitioner is lucky enough to remain in service and not losing his employment for the second time. The Court finds no infirmity in the impugned order and the writ application has no merit. The same is dismissed.