
(1998) 11 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 1135 of 1997

Umesh Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Citation : (1999) 1 BLJR 343

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Prasad, J.—In this Writ petition, prayer on behalf of the petitioner is to direct the Respondents to pay the salary, D.A., Bonus and other-admissible dues with yearly increment for the period 28.8.1992 to 14.10.1995, during which the petitioner was kept under illegal dismissal and to promote him with effect from the date his juniors were promoted in the year 1994, and pay the consequential benefits/salary. It appears that the departmental proceeding was initiated against the petitioner and in the said proceeding he was finally dismissed from service, the validity of which he challenged in C.W.J.C. No. 13183 of 1992. The said writ petition was finally heard and allowed vide judgment and order dated 17th July, 1995, contained in Annexure-1, and the impugned orders passed by the disciplinary authority, appellate authority and the revisional authority affirming that order of dismissal were quashed. Pursuant to the said judgment, the petitioner approached the Commandant, Group Headquarters, Central Industrial Security Force Respondent No. 4 with joining report and requested him to accept the same and to pay all his arrears, salary etc. On 28/29th September, 1995 Respondent No. 4 passed order contained in Annexure-3 reinstating the petitioner in service with immediate effect. However, in the said order he mentioned that the intervening period between the date of dismissal and the date of re-instatement Will be regularised separately in accordance with C.I.S.F. Rules and Regulations. Petitioner's joining accordingly has been accepted and he

started working. With respect to the payment of his salary etc. for the intervening period while he was under dismissal vide order impugned in the writ case, he filed representation before the Deputy Inspector General of Force-Respondent No. 3, which has been finally disposed of vide impugned order contained in Annexure-5 whereby the intervening period of the petitioner i.e. from the date of dismissal from service to the date of re-instatement to service has been regularised as the period spent on duty for the purpose of seniority etc. but no payment on account of back wages according to the principles of no work no pay has been allowed, with which the petitioner is aggrieved. The petitioner thereafter again made representation before the Inspector General for payment of back wages on 22.11.1996 (Annexure-6). As the said representation was not disposed of and more than two years have been elapsed since the passing of the judgment, the petitioner filed the present writ application for the aforementioned relief.

2. Mr. Teg Bahadur Singh, learned Counsel appearing for the petitioner submitted that once order of dismissal has been found to be illegal by this Court, the consequential order of grant of back wages is to follow, unless there are reasons justifying a departure from the normal order. In this regard, he referred to various orders passed by the Apex Court and by this Court, the Photostat copies whereof have been annexed as Annexure-7 series.

3. The Apex Court in the case of Smt. Manorma Verma v. State of Bihar and Ors. found no justification for the High Court not allowing the appellant back wages after it came to the conclusion that the termination was illegal. In the instant case the High Court found that the order of dismissal was illegal and accordingly quashed without even specifying that the petitioner Will not be allowed back wages and/or reinstatement. According to the apex Court, ordinarily the consequential order of grant of back wages must follow unless there are reasons on record which would justify a departure from the normal order. The apex Court also took notice of the fact that there is nothing on the record that during the period she was out of service, she was gainfully employed elsewhere. It is by now well settled that the principles of no work no pay does not apply in a case where the order of dismissal/termination is found to be illegal by a Court of law. Once the order of dismissal/termination is found to be illegal and is accordingly quashed without giving any direction with respect to the consequential effect of the same, it goes without saying that the employee Will be treated in service, as after quashing of the order, it Will be deemed to have never existed in the eyes of law, and consequently an employee Will be entitled for all consequential benefits flowing therefrom including payment of the remaining back wages after adjusting the subsistence allowance, if any paid, increments and due promotion unless the authority decides to take any fresh action.

4. The Respondent-authority in the instant case, in my opinion, has shown gross disrespect to the judgment of this Court in not granting the consequential benefits to the petitioner till date. In fact, this matter was adjourned on the last

two occasions, to enable the Respondents to finalise the claim of the petitioner by disposing of the representation pending before the Inspector General-Respondent No. 2, but instead of availing the said opportunity by the Respondents, the matter has been contested on their behalf by Mr. Pathak, learned Additional Standing Counsel, which, in my opinion, aggravates the disrespect shown to the judgment of this Court.

5. Under such circumstances, the writ petition is allowed with costs, which is assessed at Rs. 5,000 to be paid to the petitioner along with all his consequential benefits for the intervening period, within two weeks of the receipt/production of the copy of this judgment.