

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.12211 of 2017**

=====

Surendra Jha Son of late Yugal Kishore Jha resident of Bela Vihar, P.S. -  
Mithanpura, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
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.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                       |
|----------------------|---|-----------------------|
| For the Petitioner/s | : | Mr.Prashant Sinha     |
| For the State        | : | Mr.Abbas Haider, SC 6 |
| For the BIADA        | : | Mr. Partha Gaurav     |

=====

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**JUDGMENT AND ORDER**

**C.A.V.**

**Date : 14-10-2025**

The present writ application has been filed for quashing the order, dated 27.02.2017, passed by the Principal Secretary, Department of Industries, Government of Bihar, Patna, in Appeal No. 01/2015, whereby the appeal filed by the petitioner, challenging the rejection of his claim for back wages, has been



dismissed. The petitioner has further prayed for quashing the order, contained in Memo No. 6861, dated 05.12.2014, issued by the Managing Director, Bihar Industrial Area Development Authority, rejecting his claim for back wages for the period from 01.12.2007 to 03.07.2014, and also for issuance of a direction to the respondents to release full back wages for the said period along with penal interest.

2. The case of the petitioner, in brief, is that the petitioner was appointed as Peon on 07.05.1979 in the erstwhile North Bihar Industrial Area Development Authority. After formation of Bihar Industrial Area Development Authority (hereinafter referred to as 'the BIADA') in the year 2003, the services of the petitioner was transferred to the newly formed Authority.

3. On 27.09.2007, the petitioner was served with a charge memo alleging unauthorized absence from duty, failure to remain available on mobile phone and not responding to the calls of his superior officers.

4. In his reply, dated 03.10.2007, the petitioner explained that during the period of his absence, he was present at Ram Nagar and had also received salary for that period. He further stated that being a low-paid employee, he could not afford a mobile phone and had provided his landline number of his home



situated at Muzaffarpur to his superiors, while also pointing out the impracticability of making daily long-distance calls.

5. Despite the explanation, the Managing Director, BIADA, vide Memo No. 269, dated 10.11.2007, imposed punishment of compulsory retirement to the petitioner with effect from 30.11.2007. The petitioner challenged the order of punishment of compulsory retirement in C.W.J.C. No. 9420 of 2008, which was allowed by this Court on 18.06.2014 and the order of compulsory retirement was set aside. It was further directed to the respondents to resolve the grievance of the petitioner for payment of back wages in terms of the order, dated 05.05.2009, passed in CWJC No. 11196 of 2007, wherein reliance had been placed in the case of **Novartis India Ltd. v. State of West Bengal**, reported in **(2009) 3 SCC 124**.

6. Pursuant to the order, dated 18.06.20214, passed in CWJC No. 9420 of 2008, the petitioner submitted a representation on 03.11.2014 seeking payment of back wages for the period of his compulsory retirement, i.e., from 01.12.2007 to 03.07.2014. However, the Managing Director, BIADA, vide Memo No. 6861, dated 05.12.2014, rejected the claim of the petitioner for grant of back wages on the grounds, *inter alia*, that (i) the petitioner was only a temporary employee; (ii) he had exhibited indiscipline; (iii)



he was also in the habit of remaining on unauthorized absence; (iv) he had not averred anything regarding his gainful employment; and (v) the work during the absence of the petitioner, was performed by others who were duly paid and the authority could not be compelled to make double payment for the same period without any work performed by the petitioner.

7. The petitioner, thereafter, challenged the order rejecting his claim of back wages in CWJC No. 2129 of 2015, which was disposed of on 03.02.2015, granting him liberty to pursue the matter before the appellate authority, with further direction to the authority to examine the whole issue afresh.

8. In pursuance thereof, the petitioner preferred Appeal No. 01 of 2015 before the Principal Secretary, Department of Industries, government of Bihar, Patna, but the same was rejected on 27.02.2017 on the grounds that the petitioner was frequently absent from his duty despite repeated warnings, his salary was withheld on several occasions for such absence, and the petitioner was suspended on three times for his act of indiscipline. It was further observed that while working as a night watchman, the petitioner was absent from the premises without any intimation, which resulted in a theft incident.



9. Learned Counsel for the petitioner argued that once the order of compulsory retirement was quashed by this Court, the petitioner became entitled to all consequential benefits, including payment of back wages for the period he was kept out of service. The rejection of back wages on the ground of alleged indiscipline or unsubstantiated charges is wholly arbitrary inasmuch as no departmental enquiry was conducted in accordance with law and the punishment itself was set aside by this Court. The respondents could not, therefore, revive the allegations which had never been proved.

10. Learned Counsel further submits that the petitioner was never gainfully employed during the period from 01.12.2007 to 03.07.2014. Despite this fact, the respondents neither afforded him any opportunity to establish his non-employment nor called upon him to file any document/affidavit to this effect, and without granting any personal hearing, the Managing Director, BIADA, rejected his claim for back wages. Such action is *ex-facie* violative of the principles of natural justice.

11. Learned Counsel next submits that the finding of the Managing Director, treating the petitioner as a mere temporary employee even after 28 years of continuous service, is perverse and unsustainable. The petitioner was extended the benefits of pay



revision and time-bound promotion at par with the permanent employees, which clearly establishes his substantive status. Likewise, the plea of indiscipline is misconceived as no charge of misconduct was ever proved in a valid enquiry and the order of compulsory retirement having been set aside, such stale allegations cannot be resurrected to deny monetary benefits.

**12.** The reasoning given in the impugned order that the work of the petitioner was carried out by others during the period of compulsory retirement of the petitioner and the authority cannot be compelled to make double payment for one work is equally untenable. It was the action of the authority itself, which prevented the petitioner from discharging his duties and the petitioner cannot be penalized for the consequences of such arbitrary action.

**13.** Reliance is placed on the decision of the Hon'ble Supreme Court, in the case of **Novartis India Ltd.** (supra).

**14.** Learned Counsel next submits that the Principal Secretary, while dismissing the appeal preferred by the petitioner, vide order, dated 27.02.2017, failed to consider the settled law laid down by the Hon'ble Supreme Court, and instead relied upon unsubstantiated allegations, which cannot constitute a valid ground to deny back wages and as such, the impugned orders, dated 05.12.2014 and 27.02.2017, are arbitrary, violative of Articles 14



and 21 of the Constitution of India, contrary to binding judicial precedents and are liable to be quashed, with a consequential direction to the authorities to release back wages with interest.

**15.** Learned Counsel appearing for the BIADA submits that the petitioner seeks back wages for the period from 01.12.2007 to 03.07.2014, during which he remained out of service on account of his compulsory retirement. Although the order of compulsory retirement, dated 10.11.2007, was set aside by this Court on 18.06.2014, with specific direction that the question of back wages will be considered in light of the earlier judgment, dated 05.05.2009 and the principles laid down by the Hon'ble Supreme Court, in the case of **Novartis India Ltd.** (supra).

**16.** In pursuance of the aforesaid direction, the representation filed by the petitioner was duly examined by the Managing Director, BIADA, who, after considering the entire service record and relevant factors, passed a detailed and reasoned order vide Memo No. 6861, dated 05.12.2014, rejecting the claim of the petitioner. The order recorded that the petitioner's initial appointment was purely temporary, irregular and was made without any advertisement or proper selection process. The appointment letter of the petitioner itself stipulates that his service was terminable at any time without notice. The service record of



the petitioner further revealed that the petitioner was habitually absent from duty without prior permission or information, repeatedly avoided communication with his superiors despite several attempts and consistently displayed a pattern of indiscipline. It was noted that he had been suspended on three occasions and while working as a night guard, he had left the premises unattended, leading to a theft incident. The order also observed that during the period in question, the petitioner neither disclosed whether he was gainfully employed elsewhere nor demonstrated any effort to seek employment.

17. Owing to the petitioner's absence, the BIADA was compelled to get the required work executed through other persons, mostly on a contractual basis, who were duly paid for their services. The grant of back wages, in such circumstances, would result in double financial liability on the Authority, which is impermissible in law. It has been emphasized that while back wages was rightly denied, the petitioner was nonetheless extended all service benefits due upon his reinstatement in service. He was granted the 2<sup>nd</sup> ACP and MACP benefits with effect from 07.01.2015, and after superannuation, on 31.07.2016, at the age of 60 years, he was paid earned leave, gratuity, arrears of salary and



all other admissible retirement benefits. No dues presently remain outstanding against BIADA.

**18.** Learned Counsel thus submits that the impugned orders are well-reasoned and in accordance with the criteria laid down by the Hon'ble Supreme Court. The petitioner, having not made out any case for entitlement of back wages, is not entitled to any relief in the present writ petition.

**19.** In reply, learned Counsel for the petitioner submits that the petitioner obtained a copy of his memo of appeal through RTI, which is annexed as Annexure 9 to the supplementary affidavit filed by the petitioner, wherein, it has been specifically stated on affidavit before the Appellate Authority that he was not gainfully employed during the period of his compulsory retirement.

**20.** I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

**21.** The point for determination is whether the petitioner, whose compulsory retirement was quashed, is entitled to back wages for the intervening period from 01.12.2007 to 03.07.2014.

**22.** The Supreme Court, in the case of **Hindustan Tin Works Pvt. Ltd v. Employees of Hindustan Tin works Pvt.**



**Ltd.**, reported in **(1979) 2 SCC 80**, has held that ordinarily, a workman, whose service has been illegally terminated, would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances, reinstatement being the normal rule, it should be followed with full back wages.

**23.** Further, in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya**, reported in **(2013) 10 SCC 324**, the Supreme Court has held that denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages, whether employer wants to pay back wages or the employee is entitled to deny back wages or contest the employee's entitlement to get consequential benefits, the employer has to plead and prove that employee was gainfully employed during the intervening period.



24. In the decision of the Supreme Court, in the case of *Pradeep v. Manganese Ore (India) Ltd.*, reported in (2022) 3 SCC 683, and also a decision of Division Bench of this Court, in L.P.A. No. 317 of 2024, the Courts have reiterated the decision of **Deepali Gundu Surwase** (supra).

25. Now coming to the facts of the present case, the Managing Director as well as the Appellate Authority have denied back wages by relying on past service record and temporary nature of petitioner's appointment. These grounds are unsustainable. Once the order of compulsory retirement was set aside, the alleged misconduct could not be the basis to deny consequential benefits, particularly in the absence of a lawful departmental enquiry establishing such misconduct. The reasoning that the petitioner was a temporary employee also does not impress this Court. The petitioner had rendered over 28 years of service, received time bound promotion and pay revision. To treat the petitioner as a temporary employee for denying back wages is arbitrary.

26. As regards gainful employment of the petitioner, the petitioner has categorically asserted in the memo of appeal that he remained unemployed during the period of his compulsory retirement. The Authority has not produced any material to show that the petitioner was gainfully employed during the period of his



compulsory retirement. In view of the specific ground taken by the petitioner that he was not gainfully employed elsewhere, the burden cast upon the employer, which has thus not been discharged by the BIADA in the present case. The plea of double payment is equally not tenable as the employee, who was illegally kept out of service, cannot be penalized for the employer's own act of termination.

**27.** Considering the laws laid down by the Supreme Court and the decision of this Court, as discussed herein above, ordinarily, a workman, whose service has been illegally terminated would be entitled to back wages except during the period of absence from duty. The order of compulsory retirement of the petitioner has been set aside by this Court and the matter was referred back to the Authority to take a decision on the issue of payment of back wages.

**28.** On the facts and law discussed herein above, the impugned orders, dated 05.12.2014 and 27.02.2017, are liable to be set aside.

**29.** Accordingly, the impugned orders, dated 05.12.2014 and 27.02.2017, are set aside.

**30.** The BIADA is directed to pay 70 per cent of back wages to the petitioner for the period 01.12.2007 to 03.07.2014, in



the entirety of the facts of this case. The payment shall be made to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

- 31. In the result, this writ application is allowed.
- 32. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | 29-08-2025 |
| Uploading Date    | 14-10-2025 |
| Transmission Date | N/A        |

