

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.317 of 2024**  
**In**  
**Civil Writ Jurisdiction Case No.19779 of 2015**

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1. The Bihar Industrial Area Development Authority Udyog Bhawan, Gandhi Maidan, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna.
3. The Secretary, Bihar Industrial Area Development Authority, Patna.
4. Executive Director, Bihar Industrial Area Development Authority, Patna.

... ... Appellant/s

Versus

Subhash Singh S/o Late Jeonath Singh, resident of Village- Bishnupura, P.S. - Bihita, District - Patna.

... ... Respondent/s

**Appearance :**

For the Appellants	:	Mr. Kumar Priya Ranjan, Advocate
		Mr. Sudarshan Bharadwaj, Advocate
For the Respondent	:	Mr. Prashant Sinha, Advocate
		Mr. Shirish Anurag, Advocate
		Mr. Amar Kumar Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 11-08-2025**

**I.A. No.01 of 2024**

This application is filed under Section-5 of the  
Limitation Act for condonation of delay of 43 days in preferring  
the present appeal.

2. Heard learned counsel for the applicants/appellants and learned counsel for the respondent.
3. We have considered the submissions canvassed by



learned counsel for the parties and gone through the averments made in the present interlocutory application.

4. In view of the averments made in this petition and the submissions canvassed by the learned counsel for the applicants/appellants, we are of the view that the applicants/appellants have shown sufficient cause for not preferring the appeal within the time of limitation.

5. Accordingly, this interlocutory application is allowed. Delay of 43 days caused in preferring the present appeal is condoned.

**L.P.A. No.317 of 2024**

The present appeal has been filed under Clause-X of the Letters Patent of Patna High Court Rules against the order dated 15.01.2024, rendered by the learned Single Judge in CWJC No.19779 of 2015, whereby the learned Single Judge has allowed the writ petition filed by the present opponent/original writ petitioner and thereby directed the present appellants to pay the arrears of salary of the petitioner with effect from 03.11.2007 to 10.02.2012 within the stipulated time.

2. The brief facts leading to filing of the present appeal are as under:

2.1. It is the case of the petitioner that he was



working as Routine Clerk in Bihar Industrial Area Development Authority (hereinafter referred to as 'BIADA'). Vide Memo No.923 dated 30<sup>th</sup> April, 2007 he was transferred as Area In-charge to Industrial Area, Buxar. While functioning as Area In-charge of Industrial Area, Buxar, the petitioner received two applications addressed to the Executive Director, BIADA, Patna; one was on behalf of the unit named as Tractor Engineers. The said firm requested that since they are unable to run their unit, they may be allowed to transfer their unit with all the movable and immovable assets to one Minakshi Industries. Another letter addressed to the Executive Director, BIADA was written by one Arun Kumar Mishra, Proprietor of M/s Minakshi Industries, who also requested for transfer of unit in his name. The petitioner, being the Area In-charge of the concerned industrial area, vide communication dated 06.09.2007 forwarded the letters. Now, the dispute arose with regard to the same and, ultimately, the petitioner was suspended vide Memo No.3889, dated 21.09.2007 and thereafter departmental proceedings were initiated against the petitioner.

2.2. It is further the case of the petitioner that after conclusion of the departmental proceedings, the Managing Director of BIADA vide order dated 03.11.2007 ordered for a



punishment of compulsory retirement of the petitioner. The petitioner preferred an appeal before the Chairman of BIADA against the said order. However, the said appeal remained pending for almost two years and, therefore, the petitioner filed CWJC No.18332 of 2009, which was disposed of on 14.01.2010 with a direction to the Chairman, BIADA to dispose of the said appeal preferred by the petitioner within the stipulated time.

2.3. Thereafter, the Chairman, BIADA dismissed the appeal vide order dated 18.01.2010. The petitioner, therefore, challenged the said order by filing another writ petition being CWJC No.10507 of 2010. The said petition was also disposed of by this Court on 08.07.2010. The learned Single Judge set aside the order dated 18.01.2010 remitting the matter back to the Chairman, BIADA with a direction to hear the appeal afresh within the stipulated time.

2.4. Thereafter, the Chairman, BIADA vide order dated 03.02.2012 held the order of compulsory retirement as disproportionate. Hence, the order dated 03.11.2007, passed by the Managing Director, BIADA was set aside. The appellate authority also observed that BIADA may issue ‘warning’ to the petitioner that in future, if he repeats the similar mistake, his services may be terminated without any show-cause notice.



2.5. Pursuant to the order passed by the appellate authority, the petitioner came to be reinstated. However, the respondent authority did not grant back wages to the petitioner and, therefore, the petitioner challenged the order passed by the respondent authorities by filing the captioned writ petition. The learned Single Judge, by impugned judgment dated 15.01.2024, allowed the writ petition filed by the petitioner and thereby directed the respondent-BIADA to pay the back wages to the petitioner from 03.11.2007 to 10.02.2012. The original respondents/present appellants, being aggrieved by the aforesaid direction, preferred the present appeal.

3. Heard learned counsel for the appellants and learned counsel for the respondent.

4. Learned counsel for the appellants would mainly assail the impugned judgment passed by the learned Single Judge on the ground that the learned Single Judge has wrongly placed reliance upon Rule 97 of the Bihar Service Code. It is contended that the original petitioner has not fully been exonerated and, therefore, he is not entitled to claim back wages. Learned counsel submits that the learned Single Judge has committed grave error while giving direction to pay the back wages to the writ petitioner. Learned counsel has placed reliance



upon the decision rendered by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors.**, reported in (2013) 10 SCC 324. Learned counsel has, more particularly, placed reliance upon the observation made by the Hon'ble Supreme Court in paragraph-38.3 of the said decision. Learned counsel for the appellants, therefore, urged that the direction issued by the learned Single Judge be set aside and the present appeal be allowed.

5. On the other hand, learned counsel appearing for the opponent/original writ petitioner has opposed the present appeal. Learned counsel has referred the impugned judgment passed by the learned Single Judge and thereafter contended that once the order of compulsory retirement of the petitioner, passed by the respondent authority, has been set aside by the appellate authority and the said order passed by the appellate authority has not been challenged by the appellants by filing writ petition before this Court, it is not open for the present appellants to contend that the original writ petitioner is not entitled to back wages. It is further submitted that the learned Single Judge has not committed any error while directing the appellants herein to pay back wages to the petitioner for the period in question.



Learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase** (supra). Learned counsel for the original writ petitioner has also placed reliance upon the recent decision rendered by this Court in the case of **Rakesh Roshan Gupta Vs. The Chairman-cum-Managing Director, State Bank of India & Ors.**, reported in **2025 (2) PLJR 120.**

5.1. Learned counsel submits that the issue involved in the present case is squarely covered by the aforesaid two decisions and, therefore, this Court may not entertain the present appeal.

6. We have considered the submissions canvassed by the learned Advocates. We have also perused the materials placed on record and the decisions upon which reliance has been placed by the learned Advocates for the parties. It would emerge from the record that the departmental proceedings were initiated against the original writ petitioner. After conclusion of the departmental proceedings, the disciplinary authority passed the order of compulsory retirement of the petitioner. The petitioner challenged the said order before the appellate authority. The appellate authority dismissed the appeal filed by the petitioner. Therefore, the petitioner challenged the same by filing a writ



petition before this Court. This Court set aside the order passed by the appellate authority and remitted the matter back to the appellate authority. In the first round of litigation, the appeal filed by the petitioner was not decided by the authority within reasonable time, therefore, the petitioner filed writ petition before this Court. This Court disposed of the said writ petition by giving direction to decide the appeal within the stipulated time. Thereafter, the appellate authority passed an order in the appeal filed by the petitioner and the said appeal came to be dismissed. The petitioner, therefore, challenged the said order by filing writ petition before this Court. This Court set aside the order of the appellate authority and remanded the matter back to the appellate authority.

7. It further transpires from the record that thereafter the appellate authority passed an order on 03.02.2012 and thereby set aside the order of compulsory retirement of the petitioner passed by the disciplinary authority on the ground that the said punishment is disproportionate and thereby the original writ petitioner was ordered to be reinstated. The appellate authority also observed that BIADA may issue 'warning' to the petitioner that in future, if he repeats the similar mistake, his services may be terminated without any show-cause notice.



Copy of the said order is placed on record at Annexure-10, page 53 of the compilation of the writ petition.

8. It would further reveal from the record that the present appellants have not challenged the said order dated 03.02.2012 passed by the appellate authority by filing writ petition before this Court. However, the original writ petitioner, being aggrieved and dissatisfied with non-granting of back wages by the appellate authority, preferred the captioned writ petition before this Court. The learned Single Judge, looking to the facts and circumstances of the case, after placing reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase** (supra), directed the appellants herein to pay back wages to the petitioner for the period between 03.11.2007 to 10.02.2012.

9. We have gone through the Rule 97 of the Bihar Service Code. It is the case of the present appellants that, in the present case, as the appellate authority did not exonerate the original writ petitioner fully, therefore, he is not entitled to claim the back wages. Rule 97 of the Bihar Service Code reads as under:-

“97. (1) When a Government servant who has been dismissed, removed or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order-



(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

<sup>1</sup>[(2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be]

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

<sup>2</sup>[(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.]

10. We have gone through the aforesaid Rule. We



are of the view that the aforesaid Rule would not render any assistance to the present appellants in the facts and circumstances of the present case. It is required to be observed that the order of compulsory retirement of the petitioner passed by the disciplinary authority has been set aside by the appellate authority and the said order has not been challenged by the appellants herein by filing writ petition before this Court. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase** (supra). Paragraph-22 of the said decision reads as under:

“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. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum



decides on the legality of the action taken by the employer. 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.”

11. From the aforesaid decision rendered by the Hon’ble Supreme Court, it can be said that the Hon’ble Supreme Court has specifically observed that 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, entitle the employee to claim full back wages. Further, 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. Further, in 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 victimizing 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. Similar view has been taken by this Court in the case of **Rakesh Roshan Gupta** (supra).

12. Now, it is the specific averment made by the writ petitioner in paragraph 1(i) as well as in paragraph-17 of the memo of petition that he was not in a gainful employment during



the period in question. It is required to be observed that the original respondents/present appellants did not controvert the aforesaid averment while filing the counter affidavit.

13. We have gone through the reasoning recorded by the learned Single Judge while passing the impugned judgment and, looking to the facts and circumstances as discussed hereinabove by us, we are of the view that the learned Single Judge has not committed any error while passing the impugned judgment. Hence, no interference is required in the present appeal.

14. Accordingly, the present appeal stands dismissed.

15. Interlocutory Application(s), if any, shall also stand disposed of.

**(Vipul M. Pancholi, CJ)**

**(Partha Sarthy, J)**

*Sanjay/-*

<b>AFR/NAFR</b>	AFR
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