
(2010) 04 JH CK 0102
In the Jharkhand High Court

Asha Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2010) 04 JH CK 0102

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Learned Counsel for the petitioner submitted that the petitioner was working as Assistant Teacher and thereafter, the petitioner was wrongly dismissed from her services with effect from 10th June, 2002. The petitioner preferred a writ petition against the said order, bearing W.P.(S) No. 4338 of 2002, which was allowed by this Court vide order dated 14th October, 2003. Thereafter, against this order, the State preferred Letters Patent Appeal No. 156 of 2004, which was dismissed by the Division Bench of this Court vide order dated 11th November, 2004, against which, SLP was preferred by the State before the Hon''ble Supreme Court, which was also dismissed vide order dated 16th January, 2006. It is contended by the learned Counsel for the petitioner that several times, the petitioner had approached the respondents for resuming her duties, after the order passed by this Court in the writ petition. The petitioner approached the respondents in November, 2003 vide letter at Annexure-4 to the memo of the petition for resuming her duties, but, the respondents had not allowed the petitioner to resume her duties. Likewise, after dismissal of L.P.A. also, again a letter was written dated 9th December, 2004 (Annexure-8 to the memo of the petition) for resuming the duties, but, the respondents had not allowed the petitioner to join her services and ultimately, the Hon''ble Supreme Court dismissed the SLP vide order dated 26th January, 2006 and therefore, the petitioner is claiming salary for the period running from 10th June, 2002 to 14th February, 2006. It is further submitted by the learned Counsel for the petitioner that for no fault of the petitioner, the services of the petitioner were brought to

an end and while dismissing of the writ petition, it has been observed by this Court that the petitioner is entitled of all the benefits and therefore, from the very beginning, the petitioner is entitled for the salary for the aforesaid period.

2. Learned Counsel for the respondents submitted that the petitioner's services were terminated by the respondents with effect from 10th June, 2002 and thereafter, the writ petition was preferred by the petitioner, which was allowed. Thereafter, L.P.A. and SLP both were preferred by the respondents, which was dismissed and thereafter, a letter was written by the respondents dated 12th February, 2006, which is at Annexure-10 to the memo of the petition that the petitioner is permitted to resume her duties, but, on the basis of "No Work, No Pay", salary of the period running from 10th June, 2002 to 14th February, 2006, will not be paid and therefore, the petition, deserves to be dismissed.

3. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) the petitioner's services were brought to an end by the respondents vide order dated 10th June, 2002 on the basis of an earlier order dated 3rd June, 1989, passed by the Regional Deputy Director of Education, Darbhanga Division, Darbhanga. This order was challenged by the petitioner in W.P.(S) No. 4338 of 2002 before this Court. This writ petition was allowed vide order dated 14th October, 2003, by this Court, and it was observed as under:

It is needless to go into the facts of this case because the order dated 03.06.1989 has already been held to be non-effective by reason of the judgment delivered in C.W.J.C. No. 6543 of 1989 and other analogous cases as will be evident from Annexure 12 appended to the instant Writ Application. Following the aforementioned judgment, other Writ Applications were also disposed off as is evident from Annexure 13 at page 48 as also another order that has been brought on record at page 49 of the this Writ Application. The only ground taken by the Respondent No. 2 in the Counter Affidavit is that the petitioner was appointed on the basis of the order of "Sashan" and not on the basis of advertisement. It has further been stated that the Petitioner was appointed by political pairvi and not in accordance with law relating to appointment/recruitment.

Frankly speaking, this Court does not understand as to how the Respondents can be allowed to take pleas which are not included in the impugned order. The impugned order is very specific to the extent that the same is being issued only on the basis of the earlier order dated 03.06.1989 which could not stand judicial scrutiny in the manner stated above and were accordingly held inoperative. Consequently, this Court has no option, but to dispose off the instant Writ Application following the judgment delivered in C.W.J.C. No. 6543 of 1989 and other analogous cases (See Annexure 12). It is accordingly, held that whatever benefits the Petitioners of those cases got pursuant to the judgment referred to above, will also ensure the benefits of the Petitioner herein.

The Writ Application is accordingly, disposed off. As a consequence hereof, the impugned order stands set aside. There shall however, be no order as to costs.

(emphasis supplied)

(ii) the aforesaid decision was given on the basis of an order passed in C.W.J.C. No. 6543 of 1989 dated 7th August, 1997 and paragraph 6 of the said order reads as under:

6. Having heard the parties, I direct the authorities to take into note the subsequent development and facts that the petitioners have now obtained qualification of training and further taking into note that they are continuing in the services for about eleven years, they will decide the issue taking a lenient view in the matter. It is further observed that the impugned order dated 3rd January, 1989 having not been given effect to for about eight years, the same shall not be given effect at this belated stage.

(emphasis supplied)

In view of the aforesaid decision, it was also decided by the Hon''ble Patna High Court in August, 1997 that the order dated 3rd January, 1989 (it is submitted by the learned Counsel for the petitioner that it ought to be 3rd June, 1989, which has been modified, later on) has not been given effect to for about eight years, the same shall not be given effect at this belated stage. Thus, the aforesaid decision is much belated stage to implement an order dated 3rd June, 1989 and the matters were allowed of both the petitioners. Thus, the respondents committed same error, again. The same order dated 3rd June, 1989 is again relied upon. The respondents have not learnt anything from the aforesaid decision given by the Hon''ble Patna High Court and turned deaf ear to, the aforesaid decision, rendered by the Hon''ble Patna High Court and once again, as they have committed the same error, the petitioner compelled to file W.P(S) No. 4338 of 2002 and again, this Court has passed the order dated 14th October, 2003, as stated hereinabove. Thus, for no fault of the petitioner, the services of the petitioner have been terminated. This multifariousness of the petitions could have been avoided by the respondents. Decision rendered by the Hon''ble Court is binding upon the officers of the respondents. Perhaps, officers have not gone through that order, at all and therefore, same error has been committed, again. Thus, the principle of "No Work, No Pay" will not be applicable to the facts of the present case. This is not a case in which the petitioner is taking advantage of his own wrong; on the contrary, this is a case in which the respondents are taking advantage of their own wrong order. In the facts of the present case, respondents have restrained the petitioner by dismissing her, from continuing her services despite the earlier decision given by the Hon''ble Patna High Court dated 7th August, 1997 in C.W.J.C. No. 6543 of 1989 with C.W.J.C. No. 6577 of 1989 (Annexure-12 to the memo of the petition). Principle of "No Work, No Pay" cannot give advantage to an erring party otherwise, the erring party will get advantage of his own wrong.

(iii) After the aforesaid decision, in writ petition, preferred by the petitioner on 14th October, 2003, the petitioner preferred an application for resuming the duties in November, 2003 (Annexure-4 to the memo of the petition). Thus, the petitioner was very prompt and keen to resume the duties, but, again respondents had not allowed the petitioner to join the duties as an Assistant Teacher. Here also, no fault lies on the part of the petitioner and therefore also, "No Work, No Pay" principle is not applicable, to the facts of the present case.

(iv) Thereafter, the State preferred L.P.A. No. 156 of 2004, which was dismissed by the Division Bench of this Court vide order dated 11th November, 2004. While dismissing L.P.A., it has been observed by the Division Bench of this Court, which reads as under:

After about 18 years, the State Government issued an order on 10th June, 2002. By the said order, the services of the writ petitioner was terminated on the basis of the earlier order dated 3rd June, 1989 for the same ground that the petitioner was untrained when she was appointed. The said order of termination was again challenged by the petitioner before this Court in W.P.(S) No. 4338 of 2002. Learned single Judge on hearing the parties vide impugned order dated 14th October, 2003 held the order illegal having been issued only on the basis of the earlier order dated 3rd June, 1989 which was ordered not to be given effect by the High Court. It was noticed that the earlier order of the Patna High Court reached finality in the cases, as referred above.

Counsel for the writ petitioner/respondent submitted that all other similarly situated persons are continuing in the services and no separate order of termination was issued with regard to them which was pleaded in the writ petition and not denied by the State.

Having heard the counsel for the parties, we find no ground to be made out to interfere with the impugned order passed by the learned single judge. There being no merit, this appeal is dismissed.

(Emphasis Supplied)

Thus, the order dated 3rd June, 1989 was not allowed to be implemented, after fifteen long years and the L.P.A, preferred by the State was dismissed and then also, the respondents had not allowed the petitioner to resume the duties despite a letter written by the petitioner dated 9th December, 2004 (Annexure-8 to the memo of the petition). Thus, even after dismissal of L.P.A. also, the petitioner was ready and willing to resume the duties, even she has requested in writing, as per Annexure-8, to resume the duties, but, the respondents refused to resume the duties by the petitioner and therefore also, "No Work, No Pay" principle is not applicable in the facts of the present case.

(v) Thereafter, the State preferred SLP against dismissal of L.P.A. under Article 136 of the Constitution of India, before the Hon'ble Supreme Court, which was also dismissed vide order dated 16th January, 2006. Thus, right from very

beginning, the petitioner is very keen to join the duties, but, the respondents had relied upon an order of 3rd June, 1989 and on that basis, services of the petitioner were terminated, ignoring the decision given by the Hon"ble Patna High Court in C.W.J.C. No. 6543 of 1989 dated 7th August, 1997. Thus, from very beginning, the respondents has restrained the petitioner to work as an Assistant Teacher and thereafter, as stated hereinabove, the petition, preferred by the petitioner was allowed, L.P.A., preferred by the State was dismissed, and SLP preferred, by the State was also dismissed by the Hon"ble Supreme Court.

(vi) The learned Counsel for the petitioner has also relied upon the decision rendered by this Court in Mahendra Harizan Vs. State of Jharkhand and Others, especially in paragraph Nos. 2 and 3, which read as under:

2. Having heard the learned Counsel for the appellant, were are of the opinion that a party cannot suffer if the order reinstating the person is silent on the issue as to what consequential benefit to which the employee is entitled. Normally if an order of removal is declared illegal and is set aside by the Court of law/ competent authority, it will be presumed that there is no order of removal in the eye of law and the person automatically stands reinstated with consequential benefits i.e. seniority, arrears of salary etc. But taking into consideration the fact of each case, and latches, if any, on the part of one or the other party/parties, Court may determine as to whether full back wages or part wages be allowed.

3. In the case of G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., , the Supreme Court held that where reinstatement has been directed by the Court, the entire back wags must follow as a matter of course. Of course there is discretion in the Court having regard to special circumstances if any to modify the normal rule.

(Emphasis Supplied)

In view of the aforesaid decision also, whenever any illegal order of termination is quashed and set aside, it will be presumed that there is no order of removal in the eye of law and the person automatically stands reinstated with consequential benefits i.e. seniority, arrears of salary etc. Nonetheless, discretion is vested in the Court. Looking to the facts of the present case, as stated herein above, all fault lies on the part of the respondents from the very beginning. Respondents have relied upon some order passed by Government in the year, 1989 and terminated the services of the petitioner in 2002 (i.e. after 14 years). The very basis of the termination order was also earlier challenged and matter was decided against the erstwhile State of Bihar, by the Hon"ble Patna High Court in the year 1997, but, no care has been taken by the respondents to read that decision. Decisions rendered by the Court are binding upon the officers of the State also and same error, the respondents-State has committed again in 2002. Thereafter, looking to Annexure-4 and Annexure-8 consistently, the petitioner has requested the respondents, no sooner did, the petitioner succeeds in a writ petition, and no sooner did, the petitioner succeeds in L.P.A. to allow the

petitioner to resume the duties, but, the respondents had not allowed the petitioner resuming the duties.

4. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the petitioner is entitled to get salary for the period running from 10th June, 2002 to 14th February, 2006 and all other consequential benefits. These benefits will be paid to the petitioner, within a period of sixteen weeks, from the date of receipt of a copy of an order of this Court, by the respondents to the petitioner. Accordingly, the impugned order dated 12th February, 2006 (Annexure-10 to the memo of the petition), passed by respondent No. 2 is hereby, quashed and set aside. Thus, denial of back wages in the aforesaid order at Annexure-10 is hereby, quashed.

5. Accordingly, the writ petition is allowed and disposed of.