
(2015) 01 PAT CK 0140

In the Patna High Court

Case No : LPA No. 870 of 2012 in CWJC No. 7207 of 2011

Bihar State Aids Control Society

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 2 PLJR 765

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J

Bench : Division Bench

Advocate : A.K. Dubey, for the Appellant; Sarvesh Kumar Singh and Siddhartha Prasad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. L. Narasimha Reddy, C.J—This Letters Patent Appeal is filed against the order 1.3.2012, passed by the learned Single Judge in Patna High Court C.W.J.C. No. 7207/11. The 5th respondent herein filed the writ petition challenging an order dated 30.3.2011, passed by the appellants herein. The brief facts are as under:

2. The 1st appellant is a society brought into existence by the State of Bihar with the object of controlling the spread of AIDS. The Project Director heads the organization and it is stated that the society has two wings, namely; Integrated Counseling and Testing Center, (in short I.C.T.C.) and Anti Retroviral Therapy (in short ART), the 5th respondent was appointed as a female counselor in I.C.T.C. in the year 2005. The appointment is stated to be contractual. On account of exigency of work in ART, she was deputed in that wing. Her contract was extended up to 31.3.2009.

3. While the 5th respondent was working in I.C.T.C, the Additional Project Director is said to have issued the orders dated 17.7.2009, making appointment of the 5th respondent as permanent. About two years later, the Project Director passed an order dated 30.3.2011 cancelling the order dated 17.7.2009. According to him, there is no concept of making the appointment of any

employee of the society permanent and the order dated 17.7.2009 was passed without any jurisdiction. The 5th respondent challenged the same, by filing the writ petition, raising several grounds.

4. The writ petition was opposed by the appellants herein. They have pleaded that the contract of appointment of the 5th respondent was not extended beyond 31.3.2009 and there was no basis for the Additional Project Director to pass the order dated 17.7.2009.

5. Learned Single Judge allowed the writ petition and has set aside the order dated 30.3.2011 mainly on the ground that it was not preceded by any show cause notice. The appellants were also directed to pay the wages for the relevant period. It was left open to them to take necessary steps, in accordance with law. The order issued in the writ petition is challenged in this Letters Patent Appeal.

6. Heard Shri A.K. Dubey, learned counsel for the petitioner, and Shri Sarvesh Kumar Singh, learned counsel for the Respondents.

7. The appointment of the 5th respondent was, no doubt, on contractual basis and the last of the extensions was up to 31.3.2009. However, the Additional Project Director issued an order dated 17.7.2009 making her appointment as permanent. On the strength of that order, she was working and her services were being extracted.

8. In case the society felt that the order dated 17.7.2009 suffered from any legal or factual infirmity, it was open for them to issue a show cause notice to the 5th respondent pointing out the same and then to pass appropriate orders after taking into account, the explanation. Instead, an order was passed on 30.3.2011, straightaway, cancelling the order dated 17.7.2009. On the face of it, it is violative of principles of natural justice, whatever be the justification for the appellants, on merits. Therefore, no exception can be taken to the order of the learned Single Judge insofar as it has set aside the order dated 30.3.2011.

9. In all fairness to the petitioners, the learned Single Judge left it open to them to take steps in accordance with law. The 5th respondent is said to have resigned on 1.6.2012, i.e. three months after the writ petition was allowed. Now the only obligation on the part of the appellants would be to pay the emoluments for the period between 30.3.2011 to 1.6.2012.

10. We, therefore, dismiss the Appeal. Four week time is granted to the appellants to pay the arrears of wages, for the period as aforesaid.

11. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.