

(2010) 10 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2737 of 1997

Bihar State Small Industries Corporation Employees
Association

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 59 BLJR 198 : (2011) 2 PLJR 244

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioner, counsel for the State, who represents Respondent Nos. 3 to 8. None appears for Respondent No. 2, the Managing Director, Bihar State Small Industries Corporation Limited (hereinafter referred to as the "Corporation") but a counter affidavit has been filed on his behalf, which is on record.

2. Petitioner is the association of the employees of the Corporation. This writ petition has been filed praying, inter alia, to direct the Corporation to pay the current as also the entire arrears of salary to the members of the Association. Having considered the prayer made in the writ petition interim orders were passed in this writ petition directing the authorities of the Corporation to release payment of arrears as also current salary to the members of the Petitioner-Association. In compliance of the interim orders passed in the instant writ case part payments were made to the members of the Petitioner-Association whereafter payment was again stopped and the matter engaged the attention of the Hon'ble Supreme Court. Under orders dated 09.05.2003 passed in P.I.L. filed by Kapila Hingorani against the State of Bihar reported in 2003(3) PLJR 17(S.C.) the Hon'ble Supreme Court directed the State of Bihar to release Rs. 50 crores for disbursement of salary to the employees of the Corporation and other Public Sector Undertaking suffering paucity of fund. In the light of the orders of the

Hon''ble Supreme Court dated 09.05.2003 part payment of salary was again made to the members of the Petitioner-Association but again been stopped. It is submitted on behalf of the Petitioner-Association that failure to pay the salary by the employer is violation of the fundamental right of the employee infracting Article 21 of the Constitution of India. High Court being the custodian of fundamental right should direct the employer i.e. Managing Director of the Corporation, Respondent No. 2 to release the salary to the members of the Petitioner-Association. It is further pointed out that under orders dated 09.08.2010 the Hon''ble Supreme Court has disposed of the P.I.L. filed by Kapila Hingorani observing as follows:

The issues involved in these cases basically are legal issues. They will have to be gone into by the concerned High Courts. This Court has so far monitored the matter to its best possible ability. In the circumstances, we request the High Court to examine these matters in the PIL and pass appropriate orders in these PI Ls as expeditiously as possible. The Registry is directed to forward copy of this order to the Registrar General of the High Court. The attention of the Hon''ble Chief Justice of the High Court may be drawn to this order. We request the High Court to consider the orders passed by this Court giving appropriate directions from time to time in these cases. We also direct the High Court to consider making interim payments to the affected persons including medical treatment.

The writ petitions are disposed of accordingly.

3. From the counter affidavit of the Managing Director of the Corporation it appears that the arrears of salary of the members of the Petitioner-Association is not being released as there is paucity of fund with the Corporation leading to non-payment of retiral dues to the retired employees and salary to the serving employees. It has been further averred in the counter affidavit that the Managing Director has requested the Commissioner and Secretary, Government of Bihar to grant loan to the Corporation so as to enable the Corporation to revive the same and pay salary including arrears to its employees. It has been further averred in the counter affidavit that until such grant is made available by the Government the Corporation does not have any fund of its own from which salary of the serving employees could be paid. Counsel for the State in support of the aforesaid submissions Relied on the judgment of the Full Bench of the High Court in the case of Manikant Pathak and Others Vs. State of Bihar and Others, and submitted that for the liabilities of the Corporation the State of Bihar cannot be held responsible and that no direction should be issued by this Court to the State authorities to release funds for payment of salary including arrears to the employees of the Corporation.

4. Counsel for the Petitioner with reference to the statement made in the counter affidavit submitted that paucity of fund is the concern of the Corporation and the employees serving the Corporation are required to be paid their lawful dues failing which their right to life enshrined under Article 21 of the Constitution of India is at stake. It is also submitted that for meaningful existence the employee

must be paid his lawful dues every month failing which the employee will not have any worthwhile existence.

5. Having heard counsel for the parties and having perused the order of the Hon"ble Supreme Court in the case of Kapila Hingorani, paragraphs 14, 16, 17 and 71, I am of the view that the Hon"ble Supreme Court having Discussed the judgment of this Court in the case of Manikant Pathak and Ors. (supra) observed as follows:

71. We are of the opinion that the State, thus, has made itself liable to mitigate the sufferings of the employees of the public sector undertakings or the Government companies" but hastened to add that it is not intending to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public sector undertakings or the Government companies in all situations. The Court further observed that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary.

6. In appreciation of the aforesaid dictum laid down by the Hon"ble Supreme Court, I direct the members of the Petitioner-Association to represent before the Managing Director of the Corporation, Respondent No. 2 along with a copy of this order for payment of current as also arrears of salary and such representation should be considered and disposed of as early as possible, in any case within a period of two months from the date of its receipt. The order disposing of the representation should dwell upon the entitlement of the representationist and the liability of the Corporation to pay the arrears/current salary of the representationist. If the liability is admitted then the time-frame within which such payment shall be released in favour of the representationist be also indicated in the order.

7. The writ petition is, accordingly, disposed of.