

(2018) 07 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.16556 of 2017

Bijay Kumar Singh

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Citation : (2018) 07 PAT CK 0042

Hon'ble Judges : MOHIT KUMAR SHAH, J

Bench : Single Bench

Advocate : Y.V.Giri, R.P. Chaudhary, Rakesh Ranjan, Shilpi Keshari

Final Decision : Dismissed

Judgement

1. The present case has been filed for directing the respondents to make payment of salary and allowances for the period 09.04.2007 to 31.03.2017 to the petitioner herein for the post of Chairman, Monitoring Committee, Manisana Wage Board, Bihar, Patna, held by him.

2. The brief facts of the case are that the petitioner is the Chairman of Multi State Co-operative Land Development Bank Ltd., Bihar-Jharkhand. The

petitioner was appointed as Chairman of the State Employment Committee, Bihar, Patna by a notification dated 09.04.2002 and pursuant to various

orders passed by this Court, i.e. the order dated 03.07.2015 passed in C.W.J.C. No. 16352 of 2014, as upheld by an order dated 16.05.2016 passed in

L.P.A. No. 187 of 2016, as further upheld by dismissal of the S.L.P. bearing S.L.P. (C) No. 20151 of 2016 by the Honâ??ble Supreme Court by an

order dated 01.08.2016, as also upon passing of various orders in the contempt petition filed by the petitioner herein, the petitioner was paid

remuneration in terms of Clause 7 of the resolution of the Government of Bihar

dated 12.02.1985 for the services rendered by the petitioner as

Chairman, State Employment Committee, Bihar.

3. It is further case of the petitioner that when he was working as Chairman, State Employment Committee, Bihar, Patna, he was appointed as

Chairman of a three Member Monitoring Committee constituted for implementing the recommendations of the Manisana Wage Board from block

level to district levelâ??s working journalists vide notification dated 28.08.2004 issued by the Labour Employment and Training Department,

Government of Bihar. The petitioner has averred in his writ petition that since the petitioner has already received salary for the period 09.04.2002 to

08.04.2007 while working as Chairman, State Employment Committee and in the meantime, he was appointed as Chairman of the Monitoring

Committee, Manisana Wage Board vide notification dated 28.08.2004, he is only claiming salary for the period 09.04.2007 to 31.03.2017 as far as his

appointment as Chairman of the Monitoring Committee, Manisana Wage Board is concerned. It is further submitted that the petitioner had filed a

representation before the Respondents on 31.03.2017 for making payment of his salary and allowances, as aforesaid, but, to no avail.

4. The learned senior counsel for the petitioner has submitted that the Deputy Secretary, Labour Employment and Training Department, Bihar, Patna

has written a note to the Labour Commissioner, Bihar dated 03.09.2004 stating therein that the petitioner herein is working on the post of Chairman,

State Employment Committee, Bihar, hence, he would be entitled to the same salary, allowances and other facilities on the post of Chairman,

Monitoring Committee, Bihar, Patna which would be fixed for the post of Chairman, State Employment Committee. It is submitted that since the

salary and allowances have already been fixed for the post of Chairman, State Employment Committee pertaining to the petitioner herein, the

Respondents are required to be directed to pay the same salary and allowances to the petitioner herein for the period the petitioner has held the post of

Chairman, Monitoring Committee i.e. for the period 09.04.2007 to 31.03.2017.

5. Per contra, the learned counsel for the Respondents has submitted that the post of Chairman, Monitoring Committee is an honorary post and the

notification by which the petitioner was appointed, does not provide for any salary / allowances to be paid for the said post. It has further been

submitted that neither the petitioner had ever reported for duty / joined on the said post in terms of the said notification dated 28.08.2004 nor he had

discharged any duty nor he had ever presided over any meeting of the said Committee. Moreover, no provision or ground has been shown by the

petitioner in support of his claim for payment of salary and allowances on the post of Chairman, Monitoring Committee.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. It is apparent from the notification dated 28.08.2004, by which the petitioner was appointed as Chairman of the three Man Manisana Wage Board

Committee, that no remuneration was payable to the petitioner herein, hence, apparently, the petitioner was entrusted with the said prestigious work on

an honorary basis. Moreover, the petitioner has not been able to controvert the specific and categorical averments of the Respondents in the counter

affidavit to the effect that the petitioner had neither joined his duties as Chairman of the Monitoring Committee nor had discharged such duties nor had

ever presided over any meeting of the said Committee, by bringing on record contemporaneous documents. It may be appropriate to state here that

the employment of the petitioner as Chairman of the State Employment Committee was made by a notification No. 148 dated 09.04.2002 wherein

itself, it was stated that the duty and responsibility of the Committee shall be as per the departmental Resolution No. 478 dated 12.02.1985 which

postulated under Clause 7 that the Chairman of the Committee, shall be entitled to all such facilities as is available to the Chairman of the Committee

of the Mica Wage Board, Shri I.N.Thakur. In such view of the matter, the learned Single Judge as also the learned Division Bench of this Court, in

the earlier round of litigation, initiated at the behest of the petitioner for grant of remuneration on the post of Chairman, State Employment Committee,

held that the petitioner is entitled to remuneration in terms of Clause 7 of the aforesaid resolution dated 12.02.1985 i.e. similar to that of the Chairman

of the Mica Wage Board, however, in the present case, no such reference regarding payment of any sort of salary or allowances has been made in

the notification dated 28.08.2004 whereby and whereunder the petitioner has been appointed as the Chairman of the Manisana Wage Board

Monitoring Committee, hence, the petitioner is not entitled to any remuneration since apparently, the petitioner has been conferred with the said

prestigious post on an honorary basis. In fact, the petitioner has failed to bring on record any request made by him to the respondents to fix his remuneration on the said post of Chairman, Manisana Wage Board Monitoring Committee pursuant to the issuance of the notification dated 28.08.2004 and only belatedly, which is prior to filing of the present writ petition, a representation is stated to have been filed by the petitioner which is dated 31.03.2017, however, no proof of the same having been served on the respondents, has been brought on record, thus, the present writ petition also suffers from the vice of delay and laches, although, the present writ petition is fit to be dismissed on the sole ground that the notification dated 28.08.2004, by which the petitioner was appointed as Chairman of the Manisana Wage Board Monitoring Committee, nowhere envisages payment of any remuneration, hence, in absence of the petitioner being vested with any legal right, no writ can be issued. Moreover, the respondents have categorically averred that neither the petitioner assumed his office nor joined on the said post of Chairman, Manisana Wage Board Monitoring Committee nor he had discharged any duties nor ever presided over any meeting of the said Committee which has not been controverted by the petitioner, by bringing on record any proof to show that the said averments made by the respondents are not correct, hence, on this ground as well, the writ petition is fit to be dismissed.

8. Now coming to the submission made by the learned senior counsel for the petitioner that the Deputy Secretary, Labour Employment and Training Department, Bihar, Patna had made a noting to the Labour Commissioner, Bihar stating that the petitioner would be entitled to remuneration for the post of Chairman Monitoring Committee, Bihar as would be fixed for the post of Chairman, State Employment Committee, hence, the petitioner is entitled to the same remuneration as has been fixed for the post which was being held by the petitioner i.e. Chairman of the State Employment Committee, it is stated that the said argument advanced on behalf of the petitioner is misplaced and devoid of any merit inasmuch as firstly, the authenticity of the said document brought on record at the last moment by way of Annexure-2 to the reply to the counter affidavit filed by the respondents, is doubtful and moreover, it is a settled law that merely, writing something in the file or making a note in the written note-sheet does not

amount to an order. Before something amounts to an order of the State Government, two things are necessary i.e. (i) the order has to be expressed in the name of the Governor or (ii) the same has to be communicated to the beneficiary or the person, who would be effected by the said order.

Reference, in this regard, be had to a judgment of the Honâ??ble Apex Court passed in the case of Bachhittar Singh Vs. State of Punjab and

Another, reported in AIR 1963 SC 395. In the instant case, the notification dated 28.08.2004 whereby and whereunder the petitioner has been

appointed as Chairman of the Manisana Wage Board Monitoring Committee has been issued under the orders of the Governor of Bihar, hence, any

amendment or addition to the said notification, even by way of fixing the remuneration of the said post of Chairman is definitely required to be notified

by a notification issued under the orders of the Governor of Bihar. In such view of the matter, the aforesaid submission made by the learned senior

counsel for the petitioner is not only misplaced but also devoid of any merit.

9 For the reasons mentioned hereinabove, I find that the present litigation initiated at the behest of the petitioner is a fortuitous litigation which is devoid of any merit.

10. Having regard to the facts and circumstances of the case as also the discussions made hereinabove, there is no merit in the present writ petition, accordingly, the same is dismissed.