
(2005) 02 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 12850 of 1999

Dr. (Mrs.) Suraiya Nasarat

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 615

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ashok Kumar Mishra, for the Appellant; Satyavrat Verma, for the Respondent

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 31.12.1994 (Annexure-3) treating the period since the date of joining, i.e. 15.2.1983 to the date of posting as leave without pay. Petitioner also prays for quashing the order dated 28.5.1995 (Annexure-9) whereby the period between 16.3.1996 to 14.5.1997 has been treated as leave without pay disentitling her the increment falling in between. Petitioner also prays for grant of promotion to the higher post. Shorn of unnecessary details, facts giving rise to the present application are that by communication dated 9th of November, 1977 (Annexure-1), the State Government communicated to the Principal of the Patna Medical College to relieve the petitioner to enable her to take the assignment in Iran. In pursuance of the said order, the Principal of the College on the same day relieved her to join the new assignment in Iran. Petitioner, thereafter, left the country and joined her assignment in Iran.

2. After return to India, she gave her joining on 15th of September, 1983. A departmental proceeding was initiated against her for her over stayal in Iran. The Inquiry Officer submitted its report. Ultimately, when the joining of the petitioner was not accepted, she filed writ application bearing number C.W.J.C. No. 12318 of 1992 which was disposed of by order dated 4.4.1994 directing the

respondents to take final decision in the matter. When no decision was taken, petitioner filed a contempt application which was registered as MJC No. 14404 of 1994 as also writ application bearing C.W.J.C. No. 7909 of 1994 for accepting the joining report. During the pendency of the writ application, impugned notification dated 31.12.1994 (Annexure-3) was issued and her joining was accepted but at the same time, it was directed that the period since the date of joining till her posting, shall be treated as leave without pay. Petitioner raised grievance and prayed for payment of salary for the intervening period and for appropriate posting. However, petitioner gave-up the prayer for payment of salary. this Court, by order dated 1.11.1995, disposed of the writ application in the following words:

"xxx It appears from Annexure-16, brought on record alongwith the amendment petition as also the counter affidavit filed by the respondents that decision has been taken to accept the joining of the petitioner and notification to that effect has been issued on 31.12.1994. The grievance as originally made out in the writ petition thus stands redressed.

By the abovesaid amendment petition however the petitioner has prayed for payment of salary for the intervening period and for appropriate posting. After making submission for a while counsel for the petitioner, however, did not press the said grievance. He. however, urged that the joining of the petitioner having been accepted with effect from 1.1.1995 she is entitled to her posting and payment of salary. Counsel for the State is not in a position to say as to why petitioner has not been provided any post and paid salary. He wanted time to take instruction. However, in view of the abovesaid notification dated 31.12.1994 it is obvious that the petitioner is not only entitled for posting but also for salary for the subsequent period. I, would accordingly direct the respondents to take appropriate decision in regard to posting and payment of salary in order to give full effect to the notification dated 31.12.1994 within a period of six weeks from today."

(Underlining mine)

3. In the light of the direction of this Court for giving the petitioner a place of posting by order dated 16.3.1996 (Annexure-5), she was posted as Medical Officer, Primary Health Centre, Imamganj in the district of Gaya. Petitioner aggrieved by her posting as Medical Officer, challenged the same before this Court and by order dated 26.11.1996 passed in C.W.J.C. No. 5157 of 1996 (Annexure-6), the aforesaid notification was set aside and the State Government was directed to consider the case of the petitioner for posting against the teaching post. While allowing the writ application, this Court observed as follows:

"It is needless to say that after reposting of the petitioner and on joining of the petitioner, she will be getting her due salary and arrears of salary, if any, in accordance with law."

4. In the light of the aforesaid order, petitioner was posted as Associate Professor

by notification dated 14.5.1997.

5. It seems that the petitioner had grievance in regard to the non-payment of the Super Time Scale and when same was not given, she filed C.W.J.C. No. 10221 of 1997 before this Court. this Court, by order dated 23.11.1998 (Annexure-8), disposed of the writ application with a direction to the State Government to dispose of the representation filed by the petitioner for grant of Super Time Scale within a stipulated period by speaking order. The grievance of the petitioner in this regard was considered and had been found meritless and accordingly rejected.

6. Mr. Ashok Kumar Mishra, appearing on behalf of the petitioner contends that after the return from abroad, petitioner submitted her joining on 15.2.1983 and in case, the delay had occurred in her posting, the blame squarely lies with the respondents and hence, the decision of the State Government as contained in notification dated 31.12.1994 (Annexure-1) to treat the period from the date of joining till posting as leave without pay, is absolutely illegal.

7. Junior Counsel to Government Pleader No. VIM, however, contends that during the pendency of C.W.J.C. No. 7909 of 1994, the said notification was issued and the petitioner prayed for payment of salary for the intervening period, later on, she gave-up the said claim and hence, she is not permitted to raise this grievance in the present application.

8. Having appreciated the rival submission, I do not find any substance in the submission of Mr. Mishra. By order dated 31.12.1994, petitioner has been granted leave without pay from 15.2.1993 till the date of posting which disentitled her the arrears of salary for the said period. By way of amendment, she raised this grievance in the writ application filed by her earlier but later on, gave up the same. In such a situation, I am of the opinion, that she cannot be permitted to agitate this grievance in the present application again.

9. There is yet another impediment in the way of the petitioner. The aforesaid notification was issued on 31.12.1994 and the petitioner had chosen to challenge the same by filing the present application filed on 23.12.1999. Petitioner, thus, is attempting to dig out a state matter.

10. While assailing the notification dated 28.5.1999, Mr. Mishra contends that petitioner was given a place of posting by notification dated 16.3.1996 which notification has been set aside by this Court and thereafter, she had been posted as Associate Professor by notification dated 14.5.1997. Hence, the decision to treat the period between 16.3.1996 to 14.5.1997 as leave without pay and further dis-entitling her increment falling between said period, is absolutely illegal.

11. Junior Counsel to Government Pleader No. VIII, however, points out that the petitioner did not join the place where she was posted by notification dated 16.3.1996 and as such, she shall not be entitled for payment of salary on the

principle of "no work no pay".

12. Having considered the rival contention, I find substance in the submission of Mr. Mishra. By notification dated 16.3.1996, petitioner was posted as a Medical Officer in a Primary Health Centre. She challenged her posting as such and this Court found the same to be illegal and accordingly, quashed it and directed for posting the petitioner on a teaching post. The State Government, in the light of the said order, posted the petitioner as Associate Professor by notification dated 14.5.1997. The order of transfer of the petitioner as Medical Officer having been found to be illegal, she cannot be deprived the salary only on the ground that she did not join in pursuance of an order, which has been found to be illegal. Further, while quashing the said order, this Court had clearly observed that the petitioner shall be entitled for the arrears of salary which would obviously mean that the petitioner shall be entitled for payment of the salary from the date she was posted as Medical Officer till she is given another place of posting in pursuance of the order of the Court. Accordingly, I am of the opinion that the impugned order dated 28.5.1999 (Annexure-9) directing that the period between 16.3.1996 to 14.5.1997 shall be counted as leave without pay and also disentitle her the increment falling during the said period, cannot be allowed to stand. Petitioner shall be entitled to payment of salary as also the due increment for the said period. Monetary benefits flowing from it be paid to the petitioner within six months from the date of receipt/production of a copy of this order.

13. Petitioner prays for her promotion to the higher post. I am of the opinion that the petitioner is not entitled for the same. In the result, this application is partly allowed. The order dated 28.5.1999 (Annexure-9) is quashed with the direction aforesaid. No cost.