
(2006) 04 PAT CK 0013
In the Patna High Court
Case No : L.P.A. No. 252 of 2006

Dr. Smt. Annapurna Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Citation : (2009) 2 PLJR 488 : (2006) 2 PLJR 488

Hon'ble Judges : J.N. Bhatt, C.J;S.N. Hussain, J

Bench : Division Bench

Advocate : Sunil Kumar Karn, for the Appellant; S.K. Ghose, A.A.G.2, for the Respondent

Final Decision : Allowed

Judgement

1. After having heard learned Counsels appearing for the parties and considering the averments made in the application for condonation of delay, we are satisfied that there was sufficient cause for not filing the appeal within time. The application for condonation of delay, therefore, shall stand allowed and the delay of 11 days in filing this Letters Patent Appeal shall stand condoned.

2. Rule is made absolute. No costs.

3. At the stage of admission learned Counsel for the appellant, as well as, learned Additional Advocate General No. 2 Mr. S.K. Ghose have been heard on the merits of this Letters Patent Appeal as upon consensus it was decided to hear this matter finally. The appellant- original petitioner Dr. Smt. Annapurna Singh has questioned the part of the impugned judgment of the learned Single

4. Judge dated 24.2.2006 in C.W.J.C. No. 13531 of 2004, whereby, the learned Single Judge found that the original petitioner-appellant is entitled to 100 percent pension, as well as, 100 percent gratuity and directed the respondent State to release the same immediately but not later than three months.

5. However, the learned Single Judge has not granted any relief towards the

claim of salary claimed by the original petitioner against the State for the period from 18th December, 1989 to 12th February, 1991 holding that she herself was at fault and, accordingly, she could not be posted. It is further observed in the impugned judgment that the State has explained that with effect from 22.3.1983 to 17.12.1989, the petitioner did not work. To that part, there is no grievance or objection on behalf of the appellant-original petitioner.

6. The short question which has now surfaced at this juncture in this Letters Patent Appeal filed by invocation of provision of Clause 10 of the Letters Patent against the limited portion of the impugned judgment of the learned Single Judge has been as to whether the denial of salary or benefit for the period from 18.12.1989 to 12.2.1991, which roughly comes to about 14 months, is justified or supportable from the material? With a view to appreciate, evaluate and adjudicate upon, the learned Counsels have addressed us on that aspect at a greater length. We have been, also, taken through the documentary evidence relied on by the parties before the learned Single Judge. In our opinion, from the factual profile, the finding of the learned Single Judge that there was a fault on the part of the original petitioner Dr. Annaapurna Singh is not substantiated from the materials on record. On a pointed query to learned Additional Advocate General No. 2 on this point we repeatedly desired to know as to whether any material reinforcing the denial of the claim is available on record or any departmental proceedings have culminated into denial of such a benefit or right of claim of salary during that period of 14 months, the answer has been in the negative.

7. It is in this context, it cannot be concluded that the denial of the benefit of salary during that period of 14 months not granted by the learned Single Judge merely on the affidavit in reply by the respondent State that the petitioner herself was responsible unsupportable by any substantiating and justifying material, with due respect, is sustainable. There is nothing on record remotely that during that period post was offered and it was denied by the petitioner. Likewise, there is nothing on the record to show that the original petitioner herself was not available for the work though the post was made. These are the things which are matters of record. Nothing has been placed on record of this case to substantiate the denial of benefit of salary during the said period of 14 months.

8. In so far as the period from 18.12.1989 to 12.2.1991 is concerned, it has been departmentally dealt with and it has been treated as an extraordinary leave and the fact found from the record is that the period from 18.12.1989 to 12.2.1991 has been, also, regularised by the order of the Government. Having once regularised and prima facie in absence of any material, it cannot be presumed that there was any fault on the part of the original petitioner. Therefore, we are unable to uphold that part of the impugned order which is under challenge in this Letters Patent Appeal under Clause 10 of the Letters Patent. We are, therefore, left with no alternative but to set aside that part of the

finding and grant the benefit like salary of the aforesaid period of 14 months to be paid by the respondent State to the appellant immediately.

9. Consequently, this Letters Patent Appeal shall succeed to that extent. The impugned direction of rejection of benefit of salary during the period from 18.12.1989 to 12.2.1991 shall stand quashed and set aside and the respondent State is hereby directed to make payment due and payable to the original petitioner during that period as expeditiously as possible and not later than three months from the date of this order.

10. With the aforesaid observations, this Letters Patent Appeal shall stand allowed without any order as to cost.