
(2012) 05 PAT CK 0101
In the Patna High Court
Case No : CWJC No. 10138 of 2007

Ganesh Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 3 PLJR 330

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

Bench : Single Bench

Advocate : Manoj Kumar, for the Appellant; Sushil Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard Learned Counsel for the petitioner and the State. Petitioner is serving as Jeep Driver in Planning and Design, Division No. 3 of the Water Resources Department, Ratwara, Muzaffarpur. He has filed this writ petition questioning the validity of the reasoned order, bearing Memo No. 1550 dated 28.7.2006, Annexure-10 whereunder request of; the petitioner for grant of additional increment in the light of the Bihar Government Servants (Special Provisions Relating to Family Planning) Rules, 1977 (hereinafter referred to as the Rules) as modified under circular letter No. 14668 dated 29.11.1990, Annexure-7 has been rejected on the twin grounds, namely, (1) that wife of the petitioner got registered for undergoing family planning operation on 1.8.1984 but petitioner submitted declaration annexing certificate, bearing No. 136 dated 22.2.1993, Annexure-1 of the Incharge Medical Officer, P.P. Programme, Sadar Hospital, Muzaffarpur (wrongly mentioned in the impugned order, Annexure-10 as 22.9.1993) much beyond three months provided in the Rules, (2) that wife of the petitioner was registered for family planning operation on 1.8.1984, but his second son was born on 7.8.1984, which is quite unnatural.

2. The first ground that petitioner submitted declaration annexing certificate dated 22.2.1993, Annexure-1 after more than three months of the family

planning operation, is being assailed with reference to the notification of the Government dated 29.11.1990, Annexure-7 whereunder relaxation was granted to the Government Servant who or his wife underwent Family Planning Operation during the period between 14.7.1977, the date from which Rules came into effect and 29.11.1990 notification Annexure-7 relaxing the rules was issued granting opportunity to the Government Servant to avail the benefit of additional increment even if the Government Servant had not availed the benefit by submitting the declaration within three months of the family planning operation. The requirement to submit declaration within three months of the Family Planning Operation as provided under the Rules and the relaxation made under notification dated 29.11.1990, Annexure-7, was considered by this Court in the case of the petitioner himself under order dated 20.9.2005 passed in CWJC No. 11721 of 2004, Annexure-8 and it was held that though wife of petitioner underwent Family Planning Operation on 13.10.1984 and petitioner submitted declaration much after three months of the operation, yet petitioner could avail the benefit of the relaxation made in the Rules after insertion of sub-rule (iii)" in Rule 2 vide notification dated 29.11.1990, Annexure-7, which clearly enable the Government Servant, who availed the benefit of the Family Planning Operation during the period between 14.7.1977--29.11.1990, the date of promulgation of the Rules and issue of the subsequent notification relaxing the Rule respectively to submit the required declaration even after passage of more than three months of the Family Planning Operation. Petitioner taking advantage of the relaxation allowed after insertion of sub-rule (iii) in Rule 2 informed the authorities under certificate dated 22.2.1993, Annexure-1 that his wife has undergone family planning operation on 13.10.1984 vide registration No. 118/84, the ground of undue delay taken in the impugned order dated 28.7.2006, Annexure-10 is wholly misconceived in view of the contents of the notification dated 29.11.1990 and the findings of this Court contained in order dated 20.9.2005, Annexure-8 passed in the case of petitioner himself.

3. The other ground taken in the impugned order that it sounds unnatural that wife of the petitioner got herself registered for undergoing family planning operation on 1.8.1984, although she gave birth to her second son on 7.8.1984 is also found factually incorrect, as perusal of the certificate issued by the Incharge Medical Officer, P.P. Programme, Sadar Hospital, Muzaffarpur bearing No. 136 dated 22.2.1993, Annexure-1 clearly indicates that the wife of the petitioner was registered for undergoing family planning operation vide serial No. 118/84 but she underwent family planning operation on 13.10.1984. Learned Commissioner while passing the impugned order has not only misconstrued the notification dated 29.11.1990 inserting sub-clause (iii) in Rule 2 relaxing the time to submit the declaration by the Government Servant but has also ignored the findings of this Court contained in order dated 20.9.2005, Annexure-8 and has also made factually incorrect statement in the impugned order that the wife of the petitioner was registered for undergoing family planning operation on 1.8.1984.

4. In view of my findings above, both the grounds taken in the impugned order

for refusing the request of the petitioner for grant of family planning increment in terms of the Rules being non-est, the impugned order dated 28.7.2006, Annexure-10 is set aside with direction to the Commissioner, Water Resources Department to ensure payment of family planning increment to the petitioner with arrears from the due date i.e. the date of next increment after 13.10.1984. The writ petition is, accordingly, allowed.