
(2005) 02 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 12870 of 1999

Gopal Sharan Dubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 150

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Vinod Kumar Kanth and Ranjan Kumar Jha, for the Appellant; J.D. Singh and Shambhu Nath, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order as contained in memo dated 15th of April, 1998 (Annexure-1) whereby the petitioner has been directed not to work and to draw salary. The said communication also stated that he is removed from service. Further prayer made by the petitioner is to quash the order dated 15th of March, 1984 (Annexure-2) whereby the petitioner's appointment has been terminated. Short facts giving rise to the present application are that by order dated 4th of October, 1982, petitioner was appointed as temporary clerk and posted at S.R. High School, Nath Nagar. In pursuance of the said order, petitioner joined the school on 11.10.1982. By order as contained in memo dated 15.3.1984 (Annexure-2), service of the petitioner, Umesh Chandra Jha, Arvind Kumar and Bhuwan Bhaskar Prasad were terminated. Aggrieved by the same, petitioner preferred C.W.J.C. No. 2130 of 1984 (Gopal Sharan Dubey vs. The State of Bihar & Ors.). Umesh Chandra Jha, Arvind Kumar and Bhuwan Bhaskar Prasad filed C.W.J.C. No. 1740 of 1984, C.W.J.C. No. 5322 of 1984 and C.W.J.C. No. 1662 of 1984 respectively before this Court. Application of the petitioner was considered by this Court and by order dated 23.4.1984, directed for its hearing alongwith C.W.J.C. No. 1740 of 1984, i.e. the writ application filed by Umesh Chandra Jha. By order dated

24.1.1986, petitioner was given ten days peremptory time to file complete copy of brief. Petitioner, did not comply the said order and in view of peremptory nature of the order, the writ application was dismissed.

2. The writ application filed by Bhuwan Bhaskar Prasad, i.e. C.W.J.C. No. 1662 of 1984 was allowed and the order of termination was set aside. Following the same, a Division Bench of this Court, by order dated 30th of March, 1999 (Annexure-6), allowed the writ application filed by Umesh Chandra Jha with which the petitioner's case was directed to be heard but as the case of the petitioner was dismissed for non-compliance of the peremptory order, the case of Umesh Chandra Jha was separately decided. Petitioner thereafter filed M.J.C. No. 1811 of 1998 and this Court, by order dated 1.10.1999, dismissed the same and declined to restore the writ application filed by the petitioner. This Court, while declining to restore the writ application, took note of the fact that the case of Umesh Chandra Jha was allowed and order of termination set aside.

3. As stated earlier, service of the petitioner was terminated alongwith Umesh Chandra Jha, Arvind Kumar and Bhuwan Bhaskar Prasad and excepting the petitioner, the order of termination of other persons have been set aside by this Court in various writ applications. However, petitioner's writ application was dismissed for default and thereafter, the restoration application filed for its restoration has also been dismissed.

4. Mr. Vinod Kumar Kanth, Senior Advocate, appearing on behalf of the petitioner contends that when the service of four persons were terminated by a common order, having common ground and the same having been set aside by this Court in respect of three employees, it shall be highly inequitable to refuse relief to the petitioner only on the ground that the writ application filed by him was dismissed for default earlier and the restoration application had also failed.

5. Mr. J.D. Singh, G.P.I, however, contends that petitioner's writ application and the restoration application having been dismissed, it shall be against the public policy to entertain a fresh writ application for the same relief. In support of the submission, reliance has been placed on a Division Bench judgment of this Court in the case of Lakshmi Sinha and another vs. The State of Bihar & Ors.) 2004(4) PLJR 126 and my attention has been drawn to the following passage from paragraph-4 of the said judgment:

"4.--xxx Thus this Court did not adjudicate the case on merits and in such a situation the question is not as to whether entertaining another application would amount to review of the order but the question is as to whether such application is fit to be entertained on ground of public policy. I am of the opinion that entertaining second application would not be in the larger interest of administration of justice. It may encourage unhealthy practice and can be used as a device for Bench hunting. The dismissal of the application for restoration because of lack of sufficient cause will have no meaning and unscrupulous litigants may use the same to pollute the stream of justice. In my opinion,

wisdom demands and public policy induces me to observe that it shall not be prudent to entertain second application."

6. Having appreciated the rival submission, I find substance in the submission of Mr. Kanth and the decision relied on by other side is clearly distinguishable. Undisputedly, service of the petitioner alongwith three other persons were terminated. The order of termination so far as other employees are concerned has been set aside by this Court. The writ application filed by the petitioner was not dismissed on merit. In such circumstance, it shall be highly inequitable not to grant relief to the petitioner. As regards the decision of this Court in the case of the Rashmi Sinha Ed.--Sic Lakshmi Sinha (supra), no such fact was there. Here, the order impugned in the present case has been set aside by this Court at the instance of other aggrieved persons.

7. In the supplementary affidavit filed by the petitioner, it has been stated that notwithstanding the orders impugned the petitioner continuously worked and got salary till March, 2003. Mr. Kanth states that the petitioner shall not claim salary for the period subsequent to March, 2003 till he joins the service in pursuance of this order.

8. Although the service of the petitioner was terminated alongwith other persons and writ applications filed by them have been allowed and the order of termination set aside, but the petitioner is facing the difficulty which is his own creation.

9. In view of aforesaid, the impugned orders dated 15th April, 1998 (Annexure-1) and 15th of March, 1984 (Annexure-2) cannot be allowed to stand and they are accordingly quashed. Petitioner shall not be entitled for salary for the period subsequent to March, 2003 till he joins the service. However, the said period shall be counter for other service benefits. Appropriate order for posting of the petitioner be passed within one month from the date of receipt/production of a copy of this order. In the result, the writ application is allowed. Impugned orders are set aside with the direction aforesaid. No cost.