

(2005) 01 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 12451 of 1999

Meena Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Citation : (2005) 1 PLJR 569

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Binod Kumar Singh, for the Appellant; A.K. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of writ in the nature of certiorari for quashing the order dated 11th of December, 1987 (Annexure-1) whereby the appointment of the petitioner as Assistant Teacher has been cancelled and she has been discharged from the service. Shorn of unnecessary details facts giving rise to the present application are that by order dated 27.2.1985 (Annexure-3), petitioner was appointed as an Assistant Teacher and posted at Primary Harijan School, Rampur Rajwa in Hasanpur Block of the district of Samastipur. According to the order of appointment, the service of the petitioner was liable to be terminated without giving prior notice. By order dated 11th of December, 1987, her service was terminated. Aggrieved by the same, she preferred C.W.J.C. No. 3347 of 1992 (Smt. Meena Kumari vs. The State of Bihar & ors.) before this Court. In the said writ application, counter affidavit was filed on behalf of respondent Nos. 3 to 6 and in paragraph-7 thereof, it was said that the service of the petitioner was terminated on the ground that her name did not find place in the approved panel. The document in support thereof, was filed as Annexure-A to the said counter affidavit. Said writ application was heard by a Division Bench of this court and by judgment dated 4th of December, 1992, same was dismissed. While dismissing the writ application, this Court took into

account the submission made by the petitioner and respondents. Relevant portion thereof reads as follows:

"5.-Learned counsel, appearing on behalf of the respondents, however, drew our attention to the counter affidavit and the office order dated 27.2.1985 (as contained in Annexure "V to the writ petition), showing that the petitioner was appointed purely on temporary basis on a condition that her service can be terminated without any prior notice, and submits that in this view of the matter, the petitioner is not entitled to any relief from this Court, that others were allowed to work by this Court and that there is no question of payment of salary as after her termination, the petitioner, if at all, is working of her own.

6.-We find substance in the submissions of the learned counsel, appearing for the respondent No. 5. From the office order (Annexure-1) it is clear that the service of the petitioner could have been terminated without any prior notice. Thus, the ground of violation of principle of natural justice has no legs to stand."

2. Undaunted by the dismissal of the aforesaid writ application, petitioner again preferred C.W.J.C. No. 5943 of 1993 (Smt. Meena Kumari vs. The State of Bihar & ors.) before this Court and a Division Bench of this Court, by order dated 27.8.1993 (Annexure -6) again dismissed the application in the following words:

"It is not in dispute that this case has been filed assailing the order dated 11.12.1987 as contained in Annexure-7. The petitioner had earlier moved this Court in C.W.J.C. No. 3347 of 1992 against the same very order and the said writ application was dismissed on merit by order dated 4.12.1992. In that view of the matter, the present writ application is not maintainable.

The writ application is, accordingly, dismissed.

However, we may state here that the petitioner is also guilty for stating incorrect fact before this Court that his earlier writ application was not admitted. As noticed above, in fact, the said application was dismissed on merit."

3. Against the aforesaid order, petitioner preferred Special Leave to Appeal (Civil) No. 6289 of 1994 and the Supreme Court, by order dated 15.4.1994 (Annexure-7), dismissed the said Special Leave Petition.

4. Mr. Binod Kumar Singh, appearing on behalf of the petitioner submits that the writ application filed by the petitioner was dismissed earlier twice and even the Special Leave to Appeal was dismissed by the Supreme Court but as this Court had passed the order on the basis of a false statement that the petitioner's name did not find place in the panel, nothing prevents this Court to recall the aforesaid orders and grant to the petitioner the relief sought for by her. In support of his submission, he has placed reliance on a judgement of the Supreme Court in the case of Sri Dadu Dayal Mahasabha vs. Sukhdeo Arya & anr. 1990(1) BLJ 590 and a Division Bench Judgement of this Court in the case of Dr. Rai Sudhakar Prasad Vs. State of Bihar and Others, . He emphasises that, in fact, the plea taken by the respondents in the earlier counter affidavit that her

name is not in the panel, is absolutely erroneous.

5. Government Pleader No. VIII, however, appearing on behalf of respondent Nos. 1 to 5 and 7 contends that the plea presently raised by the petitioner was available to her in the earlier writ applications as also in the SLP and as such, the said plea cannot be entertained by this Court in the present writ application. In answer thereto, Mr. Singh contends that the petitioner could know about the same lateron and as such, the orders passed by this court have been rendered on misrepresentation and fraud committed by the respondents and accordingly, it is a fit case in which the relief sought for by the petitioner is fit to be granted.

6. Having considered the rival submission, I do not find any substance in the contention of Mr. Singh. Petitioner challenged the order cancelling her appointment in the earlier writ application which was registered as C.W.J.C. No. 3347 of 1992. In the said case, respondents took a plea that the petitioner was appointed purely on temporary basis on a condition that her service can be removed without any prior notice. The said plea of the respondents was accepted by this Court which would be evident from paragraph-6 of the judgment quoted above.

7. Not only this, petitioner thereafter filed C.W.J.C. No 5943 of 1993 and this Court finding that the writ application filed by the petitioner earlier was dismissed on merit, said application was held to be not maintainable. Petitioner assailed the said order before the Supreme Court in SLP No. 6289 of 1994 which was dismissed by order dated 15.4.1994. Therefore, it seems that the writ application filed by the petitioner earlier was not dismissed oh the ground that the petitioners name was not in the panel, one of the grounds taken by the respondents in the counter affidavit but other ground.

8. To put the record straight, it is relevant here to state that Mr. Choudhary, G.P. No. VIII, tried to explain as to what the respondents meant by saying that the petitioner's name was not in the panel and he pointed out that as the name of the petitioner was down below in the waiting list, perhaps, in the earlier counter affidavit, the plea of the respondents was that the name of the petitioner was not in the panel.

9. As the writ application filed by the petitioner was dismissed twice earlier, I am of the opinion that in the present application the impugned order does not call any interference. Application stands dismissed accordingly.