
(2005) 02 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 12653 of 1999

Punam Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 187

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ram Chandra Singh, for the Appellant; A.K. Choudhary for the State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to pay to the petitioner the salary for the period 26.12.1991 to 8.2.1993 alongwith interest thereon. Short facts giving rise to the present application are that the petitioner was appointed as Auxiliary Nurse Midwife by order dated 19.12.1989. By order dated 25.5.1990, her service was terminated. Assailing the order of termination, petitioner filed C.W.J.C. No. 2346 of 1991 before this Court. this Court by order dated 11.4.1991, set aside the order of termination and while doing so, it observed that the order of the court shall not stand in the way of the appropriate authority from proceeding in the matter in accordance with law. Thereafter the petitioner was served with a show cause notice dated 6.8.1991 (Annexure-4) to which she replied on 16.8.1991 (Annexure-5). On consideration of the reply given by the petitioner, the Civil Surgeon-cum-Chief Medical Officer, by memo dated 27.12.1991 (Annexure-7), terminated the service of the petitioner with immediate effect. However, lateron, by order dated 12.2.1993 (Annexure-8), petitioner"s appointment has not been found to be invalid and accordingly the petitioner was posted as Auxiliary Nurse Midwife in Tarari Block of the district of Bhojpur. The aforesaid order also indicated that the petitioner had joined on

9.2.1993 and shall be entitled for payment of salary from the date of joining. It is the grievance of the petitioner that from the date of termination of service dated 27.12.1991 till her date of joining on 9.2.1993, she has not been paid the salary.

2. According to the petitioner, when the salary was not paid to her for the intervening period, she filed representation dated 16.6.1998 (Annexure-11) but that also did not yield any result.

3. Mr. Ram Chandra Singh, appearing on behalf of the petitioner submits that when the appointment of the petitioner has been found to be valid by order dated 12.2.1993, she is entitled for payment of salary for the period she remained out of employment on account of termination of her service by order dated 27.12.1991. In support of his submission, he has placed reliance on an unreported decision of this Court dated 13.3.1995 passed in C.W.J.C. No. 10463 of 1994 (Abha Singh vs. The State of Bihar & Ors.) (Annexure-10).

4. Mr. A.K. Choudhary, G.P. VIII, however, submits that the order dated 12.2.1993 finding petitioner's appointment to be valid, had in specific term indicated that the petitioner shall be paid the salary from the date of her joining, hence, she is not entitled for payment of salary for the period in between. He points out that the petitioner accepted the aforesaid order and for the first time, according to her own assertion, filed representation dated 16.6.1998 and approached this Court by filing writ application on 23.12.1999. He submits that at such a distance of time, petitioner is not entitled for the relief claimed in the present application. In support of his submission, reliance has been placed on an unreported decision of this Court dated 9.5.1995 passed in C.W.J.C. No. 4836 of 1994.

5. Having appreciated the rival submission, I find substance in the submission of Mr. Choudhary. The appointment of the petitioner was found to be valid by order dated 12.2.1993 and in the said order, it was expressly mentioned that the petitioner shall be paid the salary from the date of her joining. She accepted the same and for the first time chosen to demand the salary for the period in between by filing representation dated 16.6.1998 and writ application on 23.12.1999, Undisputedly, the petitioner had not worked for the said period. I am of the opinion that the writ application suffers from delay and laches and hence, the relief sought for by the petitioner is not fit to be granted at such a distance of time. Application stands dismissed accordingly.