

(2008) 09 PAT CK 0157
In the Patna High Court
Case No : Misc. Appeal No. 384 of 2005

Secretary, Bihar School Examination Board, Patna	APPELLANT
Vs	
Suryakeshwar Prasad and Another	RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 19, 2(b)

Citation : (2009) 1 PLJR 192

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Lalit Kishore and Binita Singh, for the Appellant; Rajeev Ranjan and Bela Singh, for the Respondent

Final Decision : Allowed

Judgement

Prasad and Ranjan, JJ.—Respondent No. 1, Suryakeshwar Prasad was an employee of the Bihar School Examination Board. According to him, he was not paid the differential amount of pension payable to him consequent upon the revision of post retiral benefits with effect from 1.4.1997 as also the entire amount of gratuity. For redressal of the aforesaid grievance, he filed C.W.J.C. No. 8112 of 2002 (Suryakeshwar Prasad vs. The State of Bihar and Others) before this Court. Learned Single Judge by order dated 12.9.2002, disposed of the writ application and rejected the first prayer for payment of the differential amount of pension but relegated him to the remedy of representation before the Secretary of the Bihar School Examination Board in respect of second relief. It directed the Secretary to consider his claim and observed that:-

"Lawful dues will be paid to the petitioner, and the balance shall be rejected by a reasoned order."

2. Respondent No. 1 aggrieved by the aforesaid order, preferred L.P.A. No. 1160 of 2002 and the appeal was partly allowed in the following words:-

"As a representation has already been permitted to the petitioner appellant for

seeking claim on his pension. Let it be understood that the representation will also permit him to lay his claim for satisfying the respondents on the dues, if any, on the basis of the revised pension. The order dated 12 September, 2002 is modified accordingly."

3. Respondent No. 1 filed representation and ultimately by order dated 27.9.2003, his claim was rejected and in fact, it was found that a sum of Rs. 1,05,223/- is due against him.

4. Respondent No. 1 filed contempt application complaining disobedience of the order dated 12.9.2002 passed in C.W.J.C. No. 8112 of 2002. It was registered as M.J.C. No. 695 of 2003 and by order dated 17.8.2005, the contempt application was disposed of holding the Board guilty of contempt of courts in terms of Section 2(b) of the Contempt of Courts Act, 1971 and directing payment of fine of Rs. 2,000, within a period of four weeks. While disposing of the contempt application, the Court also observed that the Board is not entitled to recover amount of Rs. 1,05,232.52 found to be due against respondent No. 1.

5. Aggrieved by the same, the Secretary of Bihar School Examination Board has preferred this appeal u/s 19 of the Contempt of Courts Act.

6. Mr. Lalit Kishore, Sr. Advocate, appearing on behalf of the appellant submits that in compliance of the order of the Court, the Board had passed the order and on deeper examination, the order may be held to be bad, the Board ought not to have been held guilty of Contempt of Court. He submits that the Board on appraisal of the material, came to the conclusion that in fact, a sum of Rs. 1,05,232.52 is due against respondent No. 1. It has already complied the order and therefore the learned Single Judge erred in holding the Board guilty of contempt.

7. Mr. Rajiv Ranjan, appearing on behalf of respondent No. 1, however, submits that the order has been passed by the Board but same is illegal and nothing prevented the learned Single Judge exercising the power of contempt to go into its validity and hold the contemner guilty of contempt.

8. Mr. Singh in order to buttress his submission that direction can be given in contempt proceeding placed reliance on a decision of the Supreme Court in the case of Krishna Prasad Sinha Vs. State of Bihar and Others, .

9. Having appreciated the rival submission, we are of the opinion that a Court exercising the power of contempt, may pass order flowing from the order of which disobedience is complained of but while exercising the power of contempt cannot meticulously examine the legality and validity of an order. Here, while disposing of the writ application the learned Single Judge had relegated respondent No. 1 to the remedy of representation and consequential direction to the Secretary of the Board to examine the claim and for payment of the lawful dues. It also observed that if any amount claimed by respondent No. 1 is rejected, it be so done by reasoned order. The claim of respondent No. 1 has

been considered and rejected by a reasoned order.

10. Now reverting to the decision of the Supreme Court in the case of Krishna Prasad Sinha (*supra*), we are of the opinion that this judgment in no way supports its case. In the original proceeding, an undertaking was given that pension will be paid by the State and when a contempt application was filed complaining disobedience of the order, the Supreme Court directed for payment of the arrears of pension. In the present case as stated earlier, the learned Single Judge while disposing of the writ application, has not adjudicated to his claim nor his claim was admitted by the other side.

11. In that view of the matter, it cannot be said that the appellant had committed willful disobedience of the order of the Court.

12. Accordingly, we are of the opinion that the learned Single Judge erred in holding the appellant guilty of contempt and restraining the Board not to recover the amount from respondent No. 1. However, this order shall not preclude respondent No. 1 to challenge the order dated 27,9.2003 in an appropriate proceeding and any observation made by us in this order shall have no bearing on that. In the result, the appeal is allowed and the order impugned is set aside but without any order as to costs.