
(1995) 02 PAT CK 0002
In the Patna High Court
Case No : M.J.C. No. 1951 of 1993

Sheela Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (1995) 02 PAT CK 0002

Hon'ble Judges : P.K. Sarin, J;Aftab Alam, J

Bench : Division Bench

Advocate : Sunil Kumar, Bipin Kumar Sinha and Sujeet Kumar Sinha, for the Appellant; J.P. Karn, for State, Sadanand Jha, Asim Jha and Indu Bhushan Singh for Respondents No. 5, for the Respondent

Judgement

1. This application has been filed under Article 215 of the Constitution for punishing the members of the opposite party for committing contempt of this Court by wilfully and deliberately disobeying its judgment and orders.

2. The material facts may be stated briefly as follows. By a notification issued by the State Government on 30-6-1990 opp. party No. 5 was appointed as Assistant Professor (Neo Natal) in the Department of Paediatrics at Rajendra Medical College, Ranchi. The present Petitioner came to this Court in CWJC No. 7387 of 1990 challenging the appointment of opposite party No. 5 under the aforesaid notification. Opp. party No. 5 (impleaded as Respondent No. 5 in the writ petition) failed to appear despite service of notice and hence a Bench of this Court heard the writ petition ex-parte and allowed it by judgment and order dated 6-8-1992 (copy at Annexure 1). The operative part of the order was as follows:

The statements and allegations of facts contained in the writ petition remain uncontroverted and in view of the statements and allegations made in the writ petition, the impugned notification is clearly unsustainable. We, thus, have no option but to quash the notification dated 30-6-1990 as contained in Annexure 3

and we hereby do so. Respondent No. 5 is restrained from working as Assistant Professor (Neo Natal), Paediatrics Department, Rajendra Medical College, Ranchi. The State, however, shall be at liberty to fill up the post in accordance with law and after due consideration of all the eligible candidates.

3. An attempt was then made to get the order reviewed and opposite party No. 5 filed Civil Review No. 136 of 1992. This review petition, after hearing the counsel for the review Petitioner (opposite party No. 5 in the present application), was dismissed by a bench of this Court by order dated 16.7.1993 (copy at Annexure 2). Opposite party No. 5 then preferred special leave petitions, before the Supreme Court against the judgment and order dated 6.8.1992 passed by this Court in C.W.J.C. No. 7387 of 1990 and the order dated 16.7.1993 rejecting Civil Review No. 136 of 1992. The special leave petitions registered as SLP Nos. 14370-70A of 1993 were dismissed by the Supreme Court by order dated 27.8.1993 (copy at Annexure "A" to the showcause filed on behalf of the Health Commissioner).

4. It is an admitted position that notwithstanding the order dated 6.8.1992 passed by this Court restraining opposite party No. 5 from working on the post of Assistant Professor he continued to work on that post; neither any action was taken by the State authorities to remove him from the post nor did opposite party No. 5 stop working on that post.

5. Opposite party No. 5 then filed Anr. writ petition before the Ranchi Bench of this Court on 22.12.1993 which was registered as C.W.J.C. No. 3619 of 1993 (R). The Petitioner in C.W.J.C. No. 7387 of 1990 and in the present contempt petition was impleaded as Respondent No. 5 in that writ petition which, (as it appears from the show cause filed by the Health Commissioner in this case) sought the following reliefs:

(i) It be held that the Petitioner of C.W.J.C. No. 7387 of 1990, Respondent No. 5 had obtained the order dated 6-8-1992 (Annexure 10) by placing before this Hon"ble Court wrong and incorrect facts in order to mislead this Hon"ble Court and obtained a favourable order adversely affecting the service carrier of the Petitioner, hence the consequential reliefs granted to Respondent No. 5 have to be recalled as they have caused great miscarriage of justice.

(ii) It be held that Respondent No. 5 deserves to be deprived of the relief granted to her as she had not come up to this Hon"ble Court with clean hands, rather, she distorted and suppressed the material facts.

As noted above, this writ petition sought quite extraordinary and curious reliefs and was more in the nature of a petition for review of the judgment and order passed by this Court on 6.8.1992. It is to be borne in mind that the review petition filed by opp. party No. 6 (Civil Review No. 136/1992) before the Court was earlier rejected on 16.7.1993 and his SLP against that order had also been dismissed by the Supreme Court and in that background the second writ petition was filed before the Ranchi Bench of the Court. It is also not in dispute that even

at the time of filing of this writ petition opposite party No. 5 had continued to work on the post in flagrant disregard of this Court's order.

6. In the meanwhile, this contempt petition was filed before this Court on 10.12.1993. Opposite party No. 5 admits to have received a copy of the contempt petition on 17.2.1994 and the notices on opp. parties Nos. 2 to 4 were served on 29.9.1994.

7. It is asserted in para 7 of the contempt petition (filed on 10.12.1993) that opposite party No. 5 was still working as Assistant Professor, Neo Natal, Paediatrics Department, Rajendra Medical College Hospital, Ranchi. In course of hearing (on 5.1.1995) Mr. Sunil Kumar, counsel for the Petitioner pointed out that as shown by the State authorities themselves opposite party No. 5 had been allowed to work on that post till 11.11.1994 when an order was issued relieving him from the post.

8. The fact that opposite party No. 5 kept on working on the post of Assistant Professor (Neo Natal) in the teeth of this Court's order, dated 6.8.1992, is not denied. According to the statement made in the show cause filed on behalf of the Health Commissioner, opp. party No. 2, he was relieved (not actually in office but from the Secretariat level) on 11.11.1994. Opposite party No. 5 himself does not care to say that he has stopped working on the post; no such averment is made in the show cause filed by him. In course of hearing, in answer to a pointed question Dr. Jha, learned Counsel appearing on behalf of opp. party No. 5, could only say that he had gone on leave, not that he had relinquished the post or left working on the post. The violation and disobedience of this Court's order is, thus, writ large on the face of this case. It is now to be examined how far this disobedience has been wilful and deliberate.

9. A show cause has been filed on behalf of the present incumbent to the post of Health Commissioner. With a view to escape any personal responsibility it is stated in the beginning of the show cause that the present incumbent joined the office on 17.11.1994. Further in the show cause it is feebly suggested that since the order of this Court restrained opp. party No. 5 from working on the post, it was for him alone to discontinue working on the post. A plea is also made that some (confusion was created in the minds of the authorities on account of the writ petition [CWJC No. 3619/1994 (R)] filed by opp. party No. 5 before the Ranchi Bench of this Court. It is finally submitted that a notification was issued on 11.11.1994 relieving opposite party No. 5 from the post from the Secretariat level.

10. The contents of the show cause appear to us to be wholly unsatisfactory. The plea of any confusion due to the filing of the case before the Ranchi Bench of this Court fails to pass the test of a moment's scrutiny. CWJC No. 3619/1994 (R) was filed on 22.11.1993 and the Government Advocate accepted notice on behalf of Respondents 3 and 4 in that case on, 10.1.1994, that is, about a year and a half after the order quashing the appointment of opp. party No. 5 to the post. There

is absolutely no explanation why no action was taken by the authorities for the period of a year and a half. Under the circumstances even if it is held that the inaction on the part of the authorities was not wilful or deliberate it was a case of gross negligence and carelessness and we wish to put on record our strong displeasure over the manner in which the authorities have acted or rather failed to act in this case. We would further wish to observe that from the show cause filed on his behalf it does not appear to have occurred to the Health Commissioner that the notification dated 30.6.1990, by which opp. party No. 5 was appointed to the post having been quashed by this Court by judgment and order dated 6.8.1992, his continuance on the post was wholly illegal and any payments of salaries to him for working on the post of Assistant Professor (Noe Natal) would, therefore, be absolutely illegal and would amount to unauthorised payments of Government money. The person responsible for making payments of salary to opposite party No. 5 for working on that post would be equally guilty of making unauthorised payments of Government money as opposite party No. 5 would be guilty of unauthorisedly receiving Government money. The Health Commissioner would be well advised to address himself to this aspect of the matter.

11. Now coming to the show cause filed by opp. party No. 5, it is not denied, as noted above, that opp. party No. 5 continued working on the post even after the judgment and order, dated 6.8.92. What, however, is stated in this regard in paras 6 and 10 respectively of the show cause is as follows:

6. That it is stated that subsequent to the dismissal of this deponent's Civil Review Petition No. 136/1992, and the S.L.P., this deponent then requested the department to give him an alternative posting in view of the orders of the Hon"ble Court and even suggested that the deponent may be posted on the other vacant posit in Preventive Social Medicine Department.

10: That it is respectfully submitted that unless the deponent is given any alternative posting by the State Government, he cannot give his joining on any other post and it was in this view that the deponent requested the State Government to give him any alternative posting.

The explanation furnished in the aforequoted passages appears to us to be wholly devoid of substance. In the first place the order of this Court had restrained opp. party No. 5. from working on the post in absolute terms and the restraint was not subject to the condition that the Government should give him an alternative posting Secondly, in case opp. party No. 5 actually laboured under such a misconception ti(sic) normal course for him would have been to come to this Court and to bring to this Court's notice his "predicament" instead he chose to file before the Ranchi Bench of this Court a writ petition seeking the reliefs as noted above.

12. Having given our anxious consideration to the facts and circumstances of this case, we are of the considered view, that the explanation furnished by opp. party

No. 5 is completely lacking in bonafide. We also find that the disobedience of this Court's order by opp. party No. 5 was not only wilful and deliberate but displayed a curious defiance. In view of the finding the apology expressed in the show cause appears no more than a ritualistic formality and we are not prepared to accept it. We feel that condoning such gross violation of this Court's order would not only be misplaced leniency but would amount to encouraging such behaviour. At the same time we do not wish to be unduly harsh and taking an over all view of the facts and circumstances of this case, we are of the opinion that a punishment of fine should meet the ends of justice. We, accordingly, punish opp. party No. 5 for committing a wilful disobedience of this Court's order by imposing a fine of Rs. 3,000/- only which must be paid within a month from today failing which he would undergo simple imprisonment for a fortnight. It naturally follows that his working on the post of Assistant Professor (Noe Natal) shall not enure, in any manner, to his benefit. He shall not be entitled to any experience, teaching or otherwise, on the basis nor shall it be taken into consideration in future.

13. With the aforesaid observations and directions this application stands disposed of.