

(2019) 10 PAT CK 0073

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 5046 Of 2018, Civil Writ
Jurisdiction Case No. 17144 Of 2016

Shivdani Prasad

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Citation : (2019) 10 PAT CK 0073

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Chandra Bhushan Prasad, Rakesh Ambastha, Tripurari Nath
Ambastha, Indu Bhushan

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner; learned AC to AAG 7 for the State and learned counsel for the Nagar Parishad, Barh.

2. Pursuant to order dated 19.09.2019, the Executive Officer, Nagar Parishad, Barh is present and has filed show cause. In the said show cause, at paragraphs no. 12 and 13, the following has been stated:

"12. That it is stated that after receiving the letter dated 21.9.2019 of this Hon'ble Court issued by the Assistant Registrar, Patna High Court, the opposite party no. 2 at bar level on 10.10.2019 directed the legal in- charge-cum-Accountant to place the record of Shivdani Prasad immediately and issued show cause to the legal In-charge-cum-Accountant as to why the case record was placed in late hour and further directed the admissible dues will be payable from which fund and further directed to calculate the payable amounts of Shvdani Prasad and to place it immediately with opinion.

13. That it is stated that on 17.10.2019, the Legal In-charge-Accountant submitted his explanation on the Note Sheet that the case record pertaining to the contempt has been received on 30.9.2019 in the evening and from

1.10.2019 to 4.10.2019 he has been receiving the application of the appointment of Teacher of Basic Grade and he was also engaged in another work due to which the case record was not placed within time due to which such delay occurred."

3. At this juncture, the Court called upon learned counsel for the Nagar Parishad, Barh as to whether he had not communicated about the pendency of the present case earlier. Mr. Tripurari Nath Ambastha, learned counsel who was the counsel who had received the copy of the application on behalf of the Nagar Parishad, Barh on 12.12.2018, submitted that he had sent the copy on 24.12.2018.

4. Today, Mr. Indu Bhushan, learned counsel is appearing on behalf of the Nagar Parishad, Barh.

5. From the aforesaid, it is obvious that the Executive Officer, Nagar Parishad, Barh was required to be conscious of the fact that in view of the explanation by the Incharge Accountant that the record pertaining to contempt had been received by him on 30.09.2019 in the evening, she was required to get a thorough enquiry from her office as to why earlier the record was not put up before her when she had already joined in January, 2019 and had to fix responsibility for such a situation.

6. At this juncture, the Executive Officer, Nagar Parishad, Barh submitted that the explanation given by the Incharge Accountant that the case record was received by him on 30.09.2018 requires further probe as to why the office had not placed the record immediately upon being made aware of the case. She submitted that responsibility would be fixed with regard to such delay at each stage. She also submitted that she would be fixing responsibility with regard to delay caused in bringing to her notice the fact that the present contempt application was pending and compliance of the writ Court order was required to be made within three months.

7. Coming on merits, detailed chart has been given with regard to calculation of 33 months salary payable to the petitioner from February, 2015 to October, 2017, the total coming to Rs. 11,95,644/-. It has also been stated with supporting materials that the said amount has been paid in the account of the petitioner.

8. Learned counsel for the petitioner does not dispute the aforesaid position.

9. The Executive Officer, Nagar Parishad, Barh submitted before the Court that she would take action against all concerned office staff who were responsible for not placing the matter before her earlier, especially in view of what has been informed today before the Court by previous learned counsel for the Nagar Parishad, Barh, Mr. Tripurari Nath Ambastha that he had served copy of the application to Nagar Parishad, Barh on 24.12.2018 to the Legal Clerk.

10. Having considered the matter, the Court finds that the order dated 25.08.2017 passed in CWJC No. 17144 of 2016 has been complied with and, thus, nothing further remains.

11. At this juncture, when the file brought by the Executive Officer, Nagar Parishad, Barh was placed before the Court, there is endorsement of one 'Sunil Jee' by the previous Executive Officer, Nagar Parishad on 02.01.2019. After that, there has been absolutely no movement as there is no note sheet or any document to show when the file was processed and straightaway on the note sheet side, first time the file was initiated on 09.10.2019. The Executive Officer, Nagar Parishad, Barh submitted that the same person is still the Legal Incharge. The Court is really shocked at the conduct of the Legal Incharge. When the matter which has been endorsed to him and it relates to compliance of the order of the Court and due to non-compliance when contempt application has been filed and still he does not even bother to initiate action in the matter of compliance, it raises serious doubt with regard to his conduct, competence as well as intention. Thus, the Court finds that the Executive Officer, Nagar Parishad, Barh is required to fix responsibility at every level, including the Legal Incharge and then take strict action as such conduct cannot be accepted. In the present case, after the file being marked to Legal Incharge for almost 9 months, and there being absolutely no movement, is an indication of wilful and deliberate disobedience of the order of the Court. This amounts to gross contempt. Thus, the Court had two options, either to proceed against all concerned individually or to rely upon the stand taken by the present Executive Officer, Nagar Parishad, Barh, that she would take strict action after fixing responsibility against all concerned. The Court is persuaded to go for the second option as the Executive Officer, Nagar Parishad, Barh has assured the Court that she would take strict action against all concerned for such a situation. The Court relying on her undertaking does not propose to go into the aspect.

12. Before parting, the Executive Officer, Nagar Parishad, Barh submitted that the petitioner having superannuated in the year, 2017 has still not handed over the formal charge to his successor despite repeated requests. On this, learned counsel for the petitioner submitted that he shall appear in the office of the Nagar Parishad, Barh on 5th November, 2019 at 11:00 A.M. and hand over the formal charge, as may be required under the law, to the successors, the present Accountant as well as Head Clerk separately, as may be required under the rules.

13. On the fair stand taken by learned counsel for the petitioner that he shall appear in the office of the Nagar Parishad, Barh and complete the formalities, the application stands disposed off. It is made clear that the petitioner would ensure that he completes all the formalities of handing over the charge from the post he superannuated to the incumbent within two working days from 5th November, 2019. It is further made clear that till the time the petitioner does not do so, he shall not take out any amount of Rs. 11,95,644/- credited into his account in terms of the writ Court order.

14. Personal appearance of the officer stands dispensed with.