
(1999) 10 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 2211 of 1996 R

Shri Hari Narain Ojha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 PLJR 188

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; R.K. Marathia, for the Respondent

Final Decision : Dismissed

Judgement

A K. Ganguly, J.—This matter has a chequered history. From the record it is disclosed how the process of this Court has been abused repeatedly at the instance of the writ Petitioner. It appears that the writ Petitioner was subjected to a departmental proceedings on certain charges. The charges are apparently grave in nature. A regular, enquiry followed in respect of those charges and ultimately the matter resulted in passing of the order dated 26th September, 1975, dismissing the Petitioner from service. Against such order, the Petitioner filed an appeal. As the appeal was not disposed of by a speaking order, the Petitioner filed a writ application, being CWJC No. 2761/75 before this Hon'ble Court. A Division Bench of this Court, after hearing the parties, allowed the writ application of the Petitioner as the non-speaking order passed by an appellate authority was not approved. The order was quashed with the direction upon the Respondent authorities to pass a speaking order.

2. Thereafter, an order was passed by the appellate authority. The said order was challenged before this Court by the Petitioner. Another Division Bench of this Court, by order dated 4.1.79 passed in CWJC No. 521/78, held that the order of the appellate authority was a non-speaking one and remanded the matter again to pass a speaking order. Thereupon an order was passed by the appellate

authority which is a speaking one.

3. But the Petitioner challenged the same before Court in CWJC No. 1529/79. The said writ application came for hearing before this Court and this Court by order dated 16.5.79 dismissed the writ application. Against the said dismissal order dated 16.5.79, an SLP was filed before the Hon"ble Supreme Court The Hon"ble Supreme Court by order dated 21.4.80 dismissed the SLP (S.L.P. No. 6723/79). Thus, it is clear that all the efforts of the Petitioner against the departmental proceedings have failed.

4. Then starts another chapter. The Petitioner started making representations before the executive authorities. On such representations two orders were passed by two Minister-in-Charge of Forest directing the reinstatement. This was followed by the order of the Chief Minister. But despite these orders, the Petitioner was not reinstated in service. The Petitioner then came before this Court by filing another writ application being CWJC No. 284/93(R). The said writ application was withdrawn by the Petitioner before a Division Bench for pursuing departmental remedy.

5. Obviously, when the Petitioner did not succeed in his pursuit of departmental remedy, he filed another writ application being CWJC No. 2485/93 (R). The said writ application was again dismissed by the Division Bench by an order dated 27th August, 1993.

6. An attempt was made to have the said order dated 27.8.93 reviewed by filing Civil Review No. 55 of 1993 R. The learned Judges of the Division Bench dismissed the review petition being Civil Review No. 55/93R, by giving some indication about the manner in which the Petitioner has been approaching this Court, the extract of the said order is as follows:

This application is for review of order passed in CWJC No. 2485 of 1993(R) by which the writ application filed by the Petitioner was dismissed Summarily, because, we find no merit in the application. It is stated that the Petitioner has filed more than a dozen writ applications in this Court and all were dismissed. The Petitioner has raised questions, which are all disputed question of fact, which can be decided in Civil Suits. No ground has been made out to review the order passed in the writ application.

7. Not being satisfied, the Petitioner filed yet another writ application being CWJC No. 2976/95R, raising various questions including his post-retirement payments. A learned Single Judge of this Court by a detailed order dismissed the same on 15.12.95.

8. An attempt was made to review the said order dated 15.12.95 by filing a review petition, Civil Review No. 35/96 (R). That was also dismissed by the learned Single Judge by an order dated 5.7.96.

9. Against the said order dated 5.7.96, L.P.A. No. 168/96 (R) was filed before this Court. The Division Bench also affirmed the said order passed on review and

did not interfere with the same.

10. After all these, the present writ application has been filed praying for his reinstatement in service and for declaring that the order of dismissal passed against the Petitioner on 26.9.75 is without jurisdiction.

11. It may be noted that the Petitioner has now joined the Bar as an Advocate of this Court and he has argued the case himself.

12. From the above narration of events, it appears that the present writ application is utterly misconceived and barred by the principle of *res judicata*, apart from being an instance of gross abuse of the process of court.

13. This Court is of the view that the Petitioner filed successive writ applications before this Court ignoring well settled principles. Such repeated recourse to the court proceeding is an abuse of the process bordering on contempt.

14. When this Court is called upon to exercise its jurisdiction under Article 226 of the Constitution, it exercises such jurisdiction in public interest and also to protect the interest of public in due administration of justice. But when the Court has to deal with a writ petition like the present one which is in the nature of an abuse of the process of the court public interest in due administration of justice receives a jolt. Reference, in this connection, may be made to the judgment of the Hon'ble Supreme Court in the case of Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . The learned Judge dealing with almost the similar question made the following observations:

The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

15. One of the facet of the said principle of public policy is that there should be finality in litigation. It is this principle which has been enunciated in the doctrine of *Res Judicata* but in the instant case, at the instance of the Petitioner, the said principle of finality in litigation has been repeatedly abused. This Court has to devote its time to hear this petition and pass its order in respect of claims which have been decided before. So it becomes a case of gross abuse of the process of the court. The Court has sufficient jurisdiction to protect itself against such abuse. Relevant observations in this regard have been made in the case of *Wright v. Bennett and Anr.* (1948 (1) AELR 227. In the said judgment, the learned Judge has quoted an observation of Lord Justice Somervell which I quote:

I think that on the authorities to which I will refer it would be accurate to say

that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

16. It is apparent, in view of the above principles, that the Petitioner is indulging in an abuse of the process of the Court. Keeping in view that fact that the Petitioner is an Advocate, this Court is not drawing any contempt proceeding against him. This Court expects that being an Advocate, he should have exercised a little more restraint before filing such proceedings. It appears that the said expectation of the Court has been belied. However, in the facts and circumstances of the case, this Court has no hesitation in dismissing this writ application by awarding cost of Re. 3000/- (Rs. three thousand) against the Petitioner. Such cost must be deposited by the Petitioner with the Patna High Court (Ranchi Bench), Council of Legal Aid and Advice, Ranchi, within a period of one month from today.

17. This writ application is accordingly dismissed with the aforesaid directions and observations.