
(2016) 05 PAT CK 0105

In the Patna High Court

Case No : Letters Patent Appeal No. 187 of 2016 in CWJC No. 16352 of 2014

State of Bihar

APPELLANT

Vs

Bijay Kumar Singh

RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Citation : (2016) 3 PLJR 954

Hon'ble Judges : I.A. Ansari, ACJ. and Mr. Samarendra Pratap Singh, J.

Bench : Division Bench

Advocate : Mr. Nagendra Sharma, Advocate, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Samarendra Pratap Singh, J.—Heard Mr. Nagendra Sharma, learned counsel appearing for the appellants.

2. The instant letters patent appeal is preferred by the State of Bihar against the order, dated 03.07.2015, passed by learned Single Judge, in C.W.J.C. No. 16352 of 2014, whereby the writ application has been allowed and the Government Notification, dated 16.06.2014, as well as the consequential order passed by the Chief Secretary, bearing Memo No. 690, dated 13.08.2014, have been set aside with a further direction to the respondents to ensure payment of remuneration payable to the petitioner strictly in terms of Clause 7 of the Resolution, dated 12.02.1985, within a period of three months.

3. Before we consider the rival submissions of the parties, it would be relevant to notice the facts of the case:-

The writ petitioner was appointed as Chairman of the State Employment Committee for a period of five years, vide notification Nos. 148, dated 09.04.2002, and 251, dated 28.08.2004. As per the notification, the duty and responsibility of the Committee shall be as per previous departmental resolution No. 478, dated 12.02.1985. Clause 5 and 7 of the notification dated, 12.02.1985, which is

relevant for adjudication of the case is, as follows:

5- Ifefr ds xSj&ljdkjh InL; jkT; ds izFke Js.kh ds leku ;k=k HkRrk ,oa nSfud HkRrk ikus ds vf/kdkjh gksxsaA ljdkjh InL;ksa dks fcgkj ;k=k HkRrk fu;ekoyh ds fu;e 144 ds vuqlkj ;k=k HkRrk ds fufer izFke Js.kh ds inkf/kdkjh ?kksf"kr fd;k tkrk gS rFkk 20@& :i;s izfrfnu ds fglkc ls nSfud HkRrk ns; gksxkA

7- Ifefr ds v/;{k dks ogh lkjh lqfo/kk,Wa izkIr gksxh tks ekbdkost cksMZ ds v/;{k Jh vkbZ0,u0 Bkdqj dks miyC/k FkhA

4. It is the case of the writ petitioner that in spite of the conditions mentioned in the appointment letter, he was not paid remuneration in terms of service conditions contained in Government Resolution No. 478, dated 12.02.1985, and that the respondents-appellants, instead of making payment as per the law, cancelled the earlier two notifications, bearing notification Nos. 148, dated 09.04.2002, and 251, dated 28.08.2004, vide notification No. 2, dated 02.01.2006. Being aggrieved, the petitioner filed C.W.J.C. No. 329 of 2006, which was allowed on 27.01.2011.

5. More years passed, still the writ petitioner was not paid remuneration as per 1985 Resolution. The State Government, vide Memo No. 484, dated 16.06.2014, in its Department of Labour Resources, Directorate of Employment and Training (Employment), as well as the Chief Secretary, vide Memo No. 690, dated 13.08.2014, fixed the salary of the writ petitioner at Rs.4,500/- per month taking a view that Clause 7 of the Resolution, dated 12.02.1985, would not be applicable in his case.

6. Being aggrieved, the petitioner filed C.W.J.C. No. 16352 of 2014, which was allowed on 03.07.2015 and is challenged in this Letters Patent Appeal.

7. The learned single Judge, while setting aside the two orders, observed that the Notification, dated 09.04.2002, consciously refers to the resolution, dated 12.02.1985, with regard to duties and responsibilities without any rider, as a whole, which would be inclusive of the remuneration payable against the post as well. Furthermore, as the appointment order of the petitioner, dated 09.04.2002, refers to the Resolution, dated 12.02.1985, Clause-7 of the resolution binds the respondents to make payment to the writ petitioner the same salary, which was paid to one Shri I.N. Thakur, as the Chairman of Mice Wage Board, and that the service conditions cannot be altered retrospectively by the respondents and they are bound under the terms and conditions reflected in the notification, dated 09.04.2002, read with the Resolution, dated 12.02.1985, aforementioned.

8. Assailing the order under challenge, Mr. Lalit Kishore, learned P.A.A.G., submits that the Notification, dated 09.04.2002, only speaks about functions and responsibilities of the Committee and there is no whisper about the salary and allowance admissible to the Chairman and Vice-Chairman of the members of the Committee. The learned Principal Additional Advocate General submits that the notification merely adopts the functions and responsibilities and not the service

conditions applicable to Shri I. N. Thakur as Chairman of Mice Wage Board.

9. We have heard the counsel for the parties. The notification of the Government, in the Department of Labour Resources, Directorate of Employment and Training (Employment) in Clause-4, dated 09.04.2002, stipulates, in no uncertain terms, that duties and responsibilities of the Committee shall be as per the Resolution No. 478, dated 12.02.1985. Clause 7 of the Departmental Resolution no. 478, dated 12.02.1985, states that all those facilities would be available to the Chairman of the Committee, which was available to the Chairman of the Mica Wage Board Shri I. N. Thakur.

10. It would appear from conjoint reading of the notification, dated 09.04.2002, and the resolution, dated 12.02.1985, that the duties, responsibilities and facilities available to the Chairman of the Mica Wage Board, Shri I. N. Thakur would be available to the Chairman of the Committee too. It would be, thus, not be right for the Government to take a stand that they would follow some part of the instructions mentioned in the Resolution, dated 12.02.1985, and would not follow the other part. The learned Single Judge has rightly set aside the Resolution, dated 16.06.2014, of the Government and the consequential order of the Chief Secretary issued, on 13.08.2014, fixing the salary of the writ petitioner at Rs. 4,500/- per month.

11. Situated thus, and in view of the clear stipulation in Clause 4 of the notification, dated 09.04.2002, read with Clause 7 of the Resolution, dated 12.02.1985, we do not find any reason to interfere with the impugned order passed by the learned Single Judge in C.W.J.C. No. 16352 of 2014.

12. In the result, there is no merit in this appeal and is accordingly dismissed.

I.A. Ansari, ACJ. - I agree.