

(2005) 03 PAT CK 0135
In the Patna High Court
Case No : LPA No. 100 of 2005

The State of Bihar and Others	Vs	APPELLANT
Om Prakash Verma and Others		RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Citation : (2005) 2 PLJR 221

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is barred by limitation. Learned Counsel appearing for the respondents opposed the prayer for condonation of delay in filing this appeal.
2. After having heard Learned Counsel for the parties and after having perused the averments made in the limitation petition, the delay in filing this appeal is condoned.
3. this Court had passed interim order dated 16.2.2005 after hearing the parties staying operation of the impugned order dated 4.8.2003 passed by the learned single Judge of this Court.
4. The factual matrix of the case is that the writ petitioners-respondents were engaged on daily wages. Later on, they were taken into work charge establishment. Thereafter, notices were issued to them for reverting them into daily wages. They came to this Court in CWJC No. 6288 of 2002 and by order dated 21.5.2002 this Court directed the respondents (appellants) not to take any coercive steps.
5. The said writ application is still pending. In the meantime, the writ petitioners-respondents filed CWJC No. 3920 of 2003 out of which this appeal arises, for a direction to the respondents not to take any coercive steps against the writ petitioners in terms of the aforesaid order passed in CWJC No. 6288 of 2002 as

well as for a direction to the respondents to make payment of their salary and other benefits in the work charge establishment.

6. Counter affidavit was filed on behalf of the State wherein they denied that the writ petitioners are entitled to salary as employees of work charge establishment on the ground that they ceased to be the employees of work charge establishment in 2001.

7. Learned single Judge after hearing the parties and relying upon the letter of the Secretary-cum-Commissioner of the Government dated 20.9.2002 directed for payment of salary to the writ petitioners-respondents as employees of work charge establishment. When a contempt application bearing M.J.C. No. 158 of 2004 was filed for implementation of the order impugned in this appeal, the learned single Judge by order dated 25.1.2005 without issuing show cause as to why appropriate action be not taken, ordered that why appropriate jail sentence be not awarded to the concerned authority. Thereafter, it appears that in pursuance of that order payment has been made to the writ petitioners-respondents as employees of work charge establishment.

8. Learned Counsel appearing for the appellant-State has submitted that once earlier writ application was filed and interim order was passed in that case, proper course for the writ petitioners was either to move in contempt proceeding for violation of the order passed in the earlier writ application or should have filed a petition for clarification of the order. Filing of second writ application for implementation of the direction passed in the earlier writ application was not maintainable. He also submitted that the learned single Judge has committed serious error of record in saying that the Secretary in letter dated 20.9.2002 has directed for payment of salary to the writ petitioners-respondents and in that view of the matter that order is to be carried out. As a matter of fact, that letter was issued with regard to carrying out of the direction issued in the case where stay was granted and details of that case have been mentioned in the aforesaid letter.

9. Learned Counsel for the writ petitioners-respondents firstly submitted that without condoning the delay in filing the appeal, stay should not have been granted. Secondly, he submitted that the second writ application was maintainable as that was for a different cause of action and was not for the same cause of action for which earlier writ application was filed. In support of his submission, he relied upon the case of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, and the case of Nawal Kishore Prasad Sinha and etc. Vs. State of Bihar and Others, .

10. It is true that without condoning the delay, order was passed staying the operation of the order of the learned single Judge, but in our view, that does not make any difference for the reason that this Court after hearing the parties found that prima facie case for stay was made out. Apart from that, this question has now become academic because now the matter is being finally disposed of on

merit and the question for consideration is whether the order passed by the learned single Judge is to be sustained or not. Earlier writ application was against the order of show cause for reverting the writ petitioners-respondents from work charge establishment to the daily wages. With regard to their reversion, interim order was passed in that case. If the writ petitioners-respondents were not paid their salary or the order was not complied with, then in our view, appropriate course was to either file a petition in that case for clarification of the impugned order that no coercive steps should be taken or a contempt petition should have been filed for non-compliance of the order. Filing of second writ application, in our view, is for implementation of interim order passed in the earlier writ application, which in our view is not maintainable. However, we are not taking a technical view of the matter and we are not inclined to throw the writ application filed by the writ petitioners-respondents on the ground that second writ application was not maintainable for the reason that we have heard the parties on merits and we will dispose it of on merits.

11. We have perused the letter dated 20.9.2002 which is at page-91 of the writ application on which the learned single Judge has relied while passing the impugned order. After going through the order of the learned single Judge it appears that he was of the view that with regard to the case of the writ petitioners-respondents a direction was issued by the Secretary, who respected the order passed in the earlier writ application. After perusal of the said letter we find that there is no mention of the earlier writ application nor there is anything in the letter to show that any direction was issued with regard to the writ petitioners-respondents. Thus, the very basis for the direction by the learned single Judge is based on the material which does not support the stand of the writ petitioners-respondents. But the fact remains that now payment has been made to the writ petitioners-respondents in pursuance of the said order, now the question as to whether they are entitled to the said salary or not would be dependent upon the ultimate result of CWJC No. 6228 of 2002. In that view of the matter, we are not inclined to issue any direction for refund of the said amount. That payment will be subject to the result of that case and in case it is found that they were not entitled to the said payment, then that is to be recovered or re-adjusted according to law. So far future payment is concerned, as we are of the view that the order passed by the learned single Judge is not according to law, the said order is set aside with this observation that it will be open for the writ petitioners-respondents to file either a petition for clarification of the order or a contempt petition in connection with the earlier order dated 21.5.2002 passed in CWJC No. 6228 of 2002. In the result, this appeal is allowed with the aforesaid observation.