
(2006) 06 JH CK 0029
In the Jharkhand High Court
Case No : WPS No. 4034 of 2004

Yasimin

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Citation : (2007) 1 JCR 350

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S.K. Jha, for the Appellant; M.K. Laik, Sr. SC I, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard the learned Counsel for the parties.

2. Reference may be made to the order dated 27.4.2006 which reads as under:

1. In this case, the employee while working as Chowkidar at Punasi Spelway Division, Deoghar, died in harness leaving behind his two legally married wives and children. The second legally married wife applied for compassionate appointment and when the application was not considered, the widow moved this Court in W.P. (S) No. 3209 of 2003. This Court disposed of the writ petition on 13.2.2004 directing the Compassionate Committee headed by the Deputy Commissioner, Deoghar to take decision in the light of the order passed by this Court. The order dated 13.2.2004 reads as under:

Heard learned Counsel appearing for the parties.

The matter relates to compassionate appointment. The Petitioner is second wife of the deceased Ali Hasan who died during service period on 6.2.1995. Petitioner made application for compassionate appointment. The matter was enquired and it was reported that petitioner is legal married wife of the deceased. In 1997 the Deputy Commissioner, Deoghar asked the petitioner to file affidavit stating that she is legally married wife. Petitioner filed affidavit and necessary papers but inspite of that when no decision was taken petitioner moved the Lokayukta, Bihar

Patna in 2000. The Lokayukta called upon respondent No. 3 why the claim has not been considered. The respondents thereafter sought legal opinion as to whether benefits of compassionate appointment be given to the second wife and since then matter is pending before the respondents for filial decision.

Learned State counsel has not disputed the fact that second marriage is permissible in Muslim Law. Respondents in their counter affidavit have not disputed the fact that petitioner is not legally married wife. This Court on 5.2.2004 after hearing the parties passed the following order:

Heard the parties.

In my view, the fight of the petitioner cannot be Adjudicated behind the first wife of the deceased-husband of the petitioner. Petitioner is permitted to ad first wife as a party-Respondent.

Learned Counsel appearing for the petitioner submits that both the petitioner and the first wife will appear before this Court,

Put up this case on 13th February, 2004 to enable the newly added respondent to file counter affidavit.

Pursuant to that order respondent No. 5 appealed through lawyer and also present in court. She, as being old lady, has no objection if the petitioner is given compassionate appointment. It is contended that both the wives are living together. The condition of the petitioner and respondent No. 5 appeared to be very pitiable. The circular upon which respondents rely does not debar legally married second wife to get the benefit of compassionate appointment.

Taking into consideration the entire facts of the case, I dispose of this writ application with a direction to the respondents to dispose of the application of the petitioner, as expeditiously as possible, and preferably within a period of two months from the date of receipt/production of copy of this order.

2. From perusal of the aforesaid order it will appear that this Court passing the order after taking took all precautions and after full satisfaction that both the wives are living together and the first wife because of her physical illness gave "No Objection" for giving compassionate appointment to the petitioner who is the widow of the deceased. This Court, therefore, made it clear that the Circular will not come in the way in refusing the claim of the petitioner. In spite of the aforesaid judgment, the Committee headed by the Deputy Commissioner, Deoghar, in utter disregard of the judgment reiterated that the compassionate appointment cannot be given to the petitioner. The said order of the Deputy Commissioner has been challenged in this writ petition. On 13.3.2006, this Court passed the following orders:

It appears that the impugned order prima facie appears to be gross disobedience of the judgment passed by this Court in W.P.(S) No. 3209 of 2003. When this Court held that a second wife after becoming widow is entitled to get

compassionate appointment, the respondent-authority could not have pass order holding that the second wife is not entitled to compassionate appointment.

Deputy Commissioner, Deoghar is directed to file counter-affidavit. On the next date, appropriate order shall be passed against the other respondents who have already filed counter-affidavit.

Put up this case on 27th April, 2006 to enable the Deputy Commissioner to file counter-affidavit.

It is hoped and trusted that respondents shall realize their mistake and do the needful in accordance with law before the next date fixed.

Let a copy of this order be handed over to Mr. M.K. Laik, Sr. S.C.-A.

3. Pursuant to the aforesaid order, a counter affidavit has been filed on behalf of the Deputy Commissioner wherein it has not been disputed that the impugned order was passed by the Committee headed by him. However, it is stated that after the order was passed on 30.3.2006 in this writ petition, the matter is being sent to the concerned Department.

4. Perhaps, the Deputy Collector, who has sworn the affidavit on behalf of the Deputy Commissioner, is not fully aware of the fact that the compassionate Committee already passed the order on 22.5.2004 rejecting the claim of the petitioner.

5. It is well settled that the authorities of the State cannot and shall not disobey a judicial order passed by a Court of competent jurisdiction. The authority has no option but to comply the direction unless such order is reversed or set aside by the higher Court of law. Here, the Deputy Commissioner, Deoghar has not only disregarded the order of this Court, but also has not bothered to personally swear affidavit and justify the impugned order passed by him.

6. In the aforesaid premises, before disposing of the matter, I once again direct the Deputy Commissioner, Deoghar to appear in person on the next date fixed and personally swear the affidavit justifying his action in passing the impugned order dated 22.5.2004.

7. Put up this matter on 15th June, 2006.

8. Let a copy of this order be handed over to Mr. M.K. Laik, Sr. S.C.-I.

3. Pursuant to the aforesaid order the Deputy Commissioner, Deoghar has appeared and filed affidavit wherein, besides stating other facts, he has stated that the department of personnel vide letter dated 18.5.2006 issued a direction that if the first wife does not object then the second wife can be appointed by Compassionate Committee if the Committee takes a decision to that effect. A copy of the said notification has been annexed as annexure A/1 to the said affidavit.

4. It is stated that presently the Personnel department has recommended the

case of the petitioner for appointment in class IV post and such recommendation has been sent to the Chief Engineer, Water Resources Department, Deoghar.

5. Today the Deputy Commissioner, Deoghar has produced before this Court a letter of appointment appointing the petitioner on the post of class IV post.

6. Although this Court is not happy with the conduct of the respondents in the matter of interpreting the judgment/order of this Court. However, in view of the fact that good sense has prevailed upon the Government and they have realized that law cannot be changed by issuing any executive instruction letter of appointment has been issued, I do not want to proceed any further. This writ application is, accordingly disposed of. Let the photo copy of the said letter as contained in annexure A/1 be kept on record.