

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22382 of 2014

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1. Basant Kumar Sinha, Son of Late Gupteshwar Prasad, Resident Of Village-
Manuabag, P.S. Rupaspur, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Energy Department,
Government of Bihar, Patna
2. Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.
3. Principal, Law College, Samastipur Vidhi Mahavidlaya, Samastipur
4. Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd.,
Vidyut Bhawan, Bailey Road, Patna
5. Director (H.R.), Bihar State Power Holding Company Ltd., Vidyut Bhawan,
Bailey Road, Patna
6. General Manager (H.R.), Bihar State Power Holding Company Ltd., Vidyut
Bhawan, Bailey Road, Patna
7. Sachchidanand Lal Karn, Law Advisor, Bihar State Power Holding Company
Ltd., Vidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Amarnath Singh, Ram Prawesh Kumar Advocates.
For the Respondent No.7.	: Mr.R.R.Prasad, Advocate.
For the respondent –Bihar State Power Holding Company Ltd.	: Mr.A.K.Ojha, Advocate.
For the State	: Mr. Sudhanshu Shekhar AC to GP-31

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 15-12-2015

The writ petition filed under Article 226 of the constitution of pristinely seeks a writ of quo warranto to declare the respondent as a usurper of the office of the Deputy Law Advisor , Bihar State Power Holding Company Limited (for short ‘the Company’). Various orders by which he was allowed to look after the post of the Deputy Law Advisor, permitted to draw salary of the post

and the order dated 18.4.2013 by which respondent no.7 was absorbed and confirmed on the post of Deputy Law Advisor have also been challenged. The promotion order of the respondent no.7 on the post of Law Advisor is also under challenge.

The writ petitioner is a retired employee of the Company. Various statements have been made providing the backdrop in which the respondent no.7 was initially made to look after the work of the duty of Deputy Law Advisor in the Law Department at the headquarters of the Company (erstwhile Electricity Board). The respondent no.7 before being allowed to look after the work of the post of Dy. Law Advisor was serving as ADO, Central Bihar Area Electricity Board. Such order after approval by the chairman of the erstwhile Board was passed on 10.7.2007 when the proposal for posting him as the Deputy Law Advisor was placed before the Law Advisor-cum-Additional Secretary of the Company an objection was raised that his posting as Deputy Law Officer is not according to the Rules. Under-mining the objection raised by the Senior Law Advisor, the respondent Company issued another order dated 29.12.2009 permitting the respondent no.7 to draw salary of the post of Deputy Law Advisor and by another notification dated 18.4.2013 he was absorbed on the post of Deputy Law Advisor. On a representation made by the respondent no.7 the respondent-

Company in the meeting held on 26.6.2014 approved his promotion to the post of Law Advisor.

The contention of the petitioner is that the erstwhile Board had notified BSEB Legal Service Cadre Rule 1996 (for short 'the Rule') which was subsequently modified by another notification dated 13.4.1999 specifically laying down in paragraph nos. 6 and 7 thereof that post of Senior Law Advisor may be filled up from the Senior District and Sessions Judge and the post of Law Advisor may be filled up by drawing officers of the subordinate judiciary of the State on the basis of deputation. Two such Law Advisor shall be drawn from the Legal Cadre of the erstwhile Board on the basis of seniority and qualification. There is no post of Deputy Law Advisor, according to the Rule. The respondent no.7 is neither a member of the subordinate judicial service of the State nor the legal service cadre of the Company. However, the post of Deputy Law Advisor was created subsequently by another notification dated 13.04.1999 but the procedure for such selection has not been laid down in 1996 Rules. Respondent no.7 had passed the L.L.B. examination while in service without taking leave. It is contended that the respondent no.7 was appointed and assigned the job of Deputy Law Advisor in complete violation of the Cadre Rules by showing undue favour to him.

Parties have exchanged pleadings.

It is an agreed position at the Bar that the respondent no.7 on attaining the age of superannuation retired from the post of Law Advisor w.e.f. 30th November, 2015. He is no longer the holder of the post of either Deputy Law Advisor or law Advisor of the respondent Company from where he could be removed on a declaration made by this Court as a usurper of the office. In this background, it has been urged on behalf of the respondents that the writ application has become infructuous since such declaration made by the Court on granting the relief cannot be carried out by the respondent-Company. The Court should not proceed with the case in which no effective relief can be granted to the writ petitioner. It has been strenuously argued that the present writ petition has maliciously been filed by a retired employee of the respondent Company who is a trigger/happy litigant.

Mr. Amarnath Singh, on the contrary, has submitted that even after the respondent no.7 relinquishing the post against which the writ petition has been filed for a writ of quo warranto, this Court may grant the relief to the extent that the respondent no.7 on finding him wholly ineligible for the post and allowed to hold the post de hors the Rules the pensionary benefits of the post payable to the respondent can be directed to be curtailed.



I have heard the parties at length and perused the materials on record. The first question which merits to be considered is whether upon superannuation of the respondent no.7 from the service the application has become infructuous as no direction can be issued to remove the respondent no.7 from the post. This Court, in view of the aforesaid primal question, would not go further into the rival submissions of the parties on the merits of the case including the contention of the respondent- Company that the Rules framed in exercise of the power conferred upon the Board under Section 79(c) of the Electricity Supply Act, 1948 constituting the Legal service Cadre Rule (Annexure-10) was never published in the gazette. Since it was not notified the Rule was not statutory in nature. Breach of the said Rule is the foundation of the grievance against appointment of respondent no.7 initially on the post of Deputy Law Advisor and subsequently promoting him as the Law Advisor of the respondent Company. Mr. Amarnath Singh while contending that upon superannuation of the respondent no.7, the writ application has not become infructuous as this Court may mould the relief and direct that the respondent no.7 upon being declared unauthorized/illegal holder of the post shall not be entitled to the terminal benefits attached to the post. To convince this Court on this aspect he has relied on **State of Punjab vs. Salil Sabhlok & Ors. [(2013)5 SCC 1; para 89 and**



90]. In the said case the Apex Court was considering the legality of the order passed by the Punjab and Haryana High Court whereby in the matter of appointment of the Chairman of the Punjab Public Service Commission, the High Court laid down the procedure for selection/ appointment of the Chairman of the Commission after quashing the appointment of the respondent. In this context the Hon'ble Supreme Court in para 90 of the report referred to the case of **Kumar Padma Prasad vs. Union of India (1992)2 SCC 428** wherein after having declared that the incumbent was not qualified to be appointed as a Judge of the Gauhati High Court in whose favour warrant of appointment was issued by the President further directed as a consequence of quashing of his appointment as a Judge of the Gauhati High Court, that the Judge designate is restrained from making and subscribing an oath or affirming in terms of Article 219 of the Constitution of India and assume office of the Judge of the High Court. It has been assiduously argued that the relief can be moulded and the respondent no.7 can be directed not to enjoy the pensionary benefits attached to the post.

Learned counsels for the Board as well as the respondent no.7 have, in contra, relied on **Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Ors. (AIR 2014 SC 246)** to contend that even if the writ of quo warranto is issued declaring



respondent no.7 as usurper of the post, this Court would not direct for any such order, as the respondent no.7 did function on the post and discharged the duties assigned for which he is entitled to payment of salary and other terminal benefits. The terminal benefits payable to an employee are determined on the basis of the last pay drawn or admissible to the post. Curtailment of the retiral benefits would necessarily mean the curtailment or reduction of the salary of the post which the respondent no.7 held and discharged when there was no such declaration by the Court as usurper of the office/post. In **Central Electricity Supply Utility (supra)** the Apex Court while examining the legality of the judgment and order of the High Court of Orissa, quashing the appointment of the respondent and directing recovery of the amount paid to him held in para 42 as under:-

“42.We may proceed to state that once we have dislodged the decision of the High Court whereby it has opined that the Chairman could not have been allowed to remain in-charge of CEO as a logical corollary the direction for recovery gets annulled. But we think it appropriate to add something. Even in a writ of quo warranto while declaring that a person is not eligible to hold the post had rendered service, we are disposed to think, there cannot be recovery of amount. While exercising the power for issue of writ of quo warranto the Court only makes a public declaration that the person holding the public office is a usurper and not eligible to hold the post and after the declaration is made he ceases to hold the office. Till the declaration is made, the incumbent renders service and when he has



rendered service he cannot be deprived of his salary. Denial of pay for the service rendered tantamounts to forced labour which is impermissible. When an appointment is admitted and the incumbent functions in the post and neither suspended nor removed from service, he is entitled to get salary, for it is his legal right and it is the duty of the employer to pay it as per the terms and conditions of the appointment. The matter may be different when someone continues after retirement by a false declaration or misrepresentation. Recovery of salary would amount to deprivation of payment while the incumbent was holding the post and had worked. Asking someone to work and when his appointment is nullified by issue of a writ of quo warranto by the court, we think that neither the employer can recover the amount nor the Court can direct for recovery of the same. There has to be some other reason for denial of payment, recovery of salary or honorarium. In this context, we may fruitfully reproduce a passage from *People's Union for Democratic Rights and others v. Union of India and others*:-

“...If a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration he cannot be forced, by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Article 23. This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service (vide *Pollock v. Williams*). The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person.”

The Apex Court in the said case also expressed a note of caution which the Court should keep in mind while issuing a writ of quo warranto as it indubitably creates a dent in the honour of a person. Para 44 of the said report bears the relevant observation of the Apex Court and is reproduced hereinbelow :

“44.The matter may be viewed from the point of view of the 5th respondent. True it is, his remaining in-charge of the post of the CEO was called in question before the High Court in a public interest litigation wherein a writ of quo warranto was issued. A judgment can be erroneous but when there is a direction for recovery of the honorarium, it indubitably creates a dent in the honour of a person. Honour once lost may be irredeemable or irresuscitable. Mr. Ramachandran has number of times submitted before us that because of the humiliation faced, the 5th respondent decided not to continue in the post of the Chairman also. We have stated so because we strongly feel that a cautious approach is requisite while dealing with a writ of quo warranto.”

No special reason has been shown to this Court by the petitioner that even in case the appointment of the respondent no.7 is declared illegal and he is dislodged even notionally from the post he was holding before his retirement, the case merits a direction for curtailment of his pensionary benefits. As I have already said the pensionary benefits are computed on amongst others the basis of last pay drawn by the incumbent. The pay already drawn cannot be

directed to be refunded or recovered. Any such order would tantamount to reducing the scale of pay and the salary already drawn by the respondent no.7. As noted by the Apex Court in **Central Electricity Supply Utility (Supra)** the same would amount to deprivation of payment while the incumbent was holding the post and had worked. In these circumstances the relief cannot be moulded as submitted by the petitioner.

As a result of the discussion made hereinabove, it is held by virtue of the superannuation of the respondent no.7 from service whose appointment has been called in question by issuing a writ of quo warranto, the writ petition has become infructuous. It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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