IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17517 of 2010

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1. Union of India, Ministry of Finance, Department of Expenditure, EG Branch, New Delhi.
2. Comptroller and Auditor General of India 10, Bahadur Shah Zafar Marg, New Delhi-110002.
3. Deputy Comptroller and Auditor General of India, Bahadur Shah Zafar Marg, New Delhi-110002.
4. The Principal Accountant General (A/CS)-I, Bihar, Patna.
5. The Principal Accountant General (Audit)-II, Bihar, Patna.
6. The Deputy Accountant General (Admn.), Office of the Accountant General (A&E)-II, Bihar, Patna.
7. The Deputy Accountant General (Admn.) Office of the Accountant General (Audit)-I, Bihar, Patna. ....Respondents-Petitioners.

Versus

Shri Gupteshwar Mishra, S/o Late Chandrika Mishra, Ex-Senior Accountant in the Office of the Accountant General (A&E)-II, Bihar, Patna, R/O Road No.2, Sanjay Gandhi Nagar, P.O.- Lohiya Nagar, Patna-800020.

.... Applicant- Respondent.

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Appearance :

For the Petitioners : Mr. Madhuresh Prasad, Advocate.

For the Respondent : Mr. M.P. Dixit, Adv.

Mr. Sanjay Kumar Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 29-06-2015

The present writ application is directed against the order dated 26.05.2010 passed in O.A. No.91 of 2005 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in short the 'Tribunal'), whereby and whereunder the Tribunal quashed and set aside the order of dismissal and ordered for reinstatement of sole-respondent, Shri Gupteshwar Mishra from the date of dismissal from service who was Senior Accountant in the Office of the Accountant General at Patna.

2. It may be noted here that the writ petition was filed on 12.10.2010 and was admitted for final hearing on 25.10.2010 upon appearance of the contesting sole respondent. By the said order of the said date, this Court ordered reinstatement subject to the result of the writ petition. The sole contesting respondent was not reinstated and he died on 25.11.2010 and, in spite of alleged intimation to the petitioners, no steps having been taken, I.A. No.3719 of 2015 was then filed by the widow of the sole-respondent for being substituted to take care of the interest of her late husband, which is allowed.

3. The sole-respondent was Senior Accountant in the office of the Accountant General, Bihar, Patna. It appears on 13.03.1997 allegedly the respondent along with other members of an unrecognized union misbehaved with the Accountant General and the Deputy Accountant General (Administration). They allegedly were illegally restrained (Gherao) in their office for a considerable period. On 14.03.1997, the Deputy Accountant General gave information with regard to misconduct and indiscipline to the local police station but the name of the respondent was not mentioned therein. The sole-respondent was suspended and subsequently a departmental proceeding was initiated. On 19.02.1998, charge-sheet was served on sole-respondent with very serious charges of hooliganism in the office and illegal confinement of the Accountant General and the Deputy Accountant General. In the charge-sheet, the first two witnesses mentioned were the Accountant General (A & E)-II and the Deputy Accountant General (Administration). After enquiry and departmental proceedings, on 20.02.2004 extreme penalty of dismissal was imposed. Appeal and revision having been dismissed without any relief, the sole-respondent filed O.A. No.91 of 2005 before the Tribunal and by the impugned order dated 26.05.2010 the Tribunal allowed the application and set aside the order of dismissal and directed for reinstatement.

4. On behalf of Union of India, it is submitted that the order of the Tribunal is not sustainable inasmuch as it clearly gives no reason in support of its order. To the contrary, learned counsel now representing the deceased employee through his widow submits that the Tribunal has noticed one of the grounds for allowing the application being that the two primary witnesses, i.e., the Accountant General (A & E)-II and the Deputy Accountant General (Administration), who were shown as the first two witnesses in the charge-sheet, were never examined in the departmental proceedings causing grave prejudice to the employee. Inasmuch as on 14.03.1997, when written compliant was made to the police by the Deputy Accountant General (Administration), the employee-Shri Gupteshwar Mishra was not even named therein and, subsequently, mala fidely he has been roped in. He then submitted that in any view of the matter, the employee having died on 25.11.2010, these proceedings would abate because neither order of remand to the Tribunal for fresh consideration nor any order for fresh enquiry can be passed after the death of the employee.

5. Having considered the matter, in our view, the order of the Tribunal holding that there was serious flaw in the proceedings by non-examination of the Accountant General and the Deputy Accountant General cannot be said to be bad or perverse in any manner. However, even if we set aside the order of the Tribunal that would have necessitated remanding the matter to the Tribunal for fresh consideration or fresh enquiry which obviously cannot be done as the employee is dead. In our view, this writ petition would abate as has been held by the Apex Court in the case of **Basudeo Tiwary Vs. Sidho Kanhu University and others** since reported in **(1998) 8 Supreme Court Cases 194**. As held in that case, it would be deemed that the employee died in harness. We also supported by a decision of this Court in the case of **Ashok Kumar Singh Vs. Bihar Industrial and Technical Consultancy Organization Limited and others** since reported in **2000 (4)**

PLJR 471. There is yet another decision of this Court in the case of Mohan Lall Vs. the State of Bihar being C.W.J.C. No.9636 of 2008 disposed of on 08.08.2013 wherein again it was held that the employee would be deemed to have died in harness in such a situation.

6. Accordingly, we hold that this writ petition abates and the consequence being that the order of the Tribunal being for reinstatement of the employee, he would be deemed to have died in harness and necessary consequence would automatically flow with regard to death-cum-retiral dues and payment of salary etc.

7. With these observations and directions, this writ petition stands disposed of.

(Navaniti Prasad Singh, J.)

I agree.
Rajendra Kumar Mishra, J.

(Rajendra Kumar Mishra, J)

Trivedi/AFR

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