

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1141 of 2012
IN
Civil Writ Jurisdiction Case No 3269 of 2007

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1. The State Of Bihar through the Commissioner Department of Industries, New Secretariat, Govt. Of Bihar, Patna
2. The Industrial Development Commissioner Department Of Industries, Govt. Of Bihar, New Secretariat, Patna
3. The Director of Industries, Govt. Of Bihar, New Secretariat, Patna
4. The Addl. Director of Industries, Govt. Of Bihar, Patna
5. The Administrative Officer Upendra Maharathi Shilp Anusandhan Sansthan, Patliputra Industrial Area, Patna-800013

.... Appellant/s

Versus

Kundan Prasad Sinha S/O Late Urmila Devi (Mother) And Late Rajeshwari Prasad Sinha (Father) R/O Road No. 1, Indra Nagar, Postal Park, P.S.- Kankarbagh, Distt.-Patna

.... Respondent/s

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For the Appellant/s : Mr Kinkar Kumar, SC XXVII
& Mr Mahboob Ashraf, AC to SC XXVII

For the Respondent/s : Mr Harendra Kumar Tiwary, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-02-2015

State is in intra-Court appeal from the judgment and order dated 14.09.2011 passed by the learned Single Judge of this Court in CWJC No 3269 of 2007. The sole respondent in this appeal was writ petitioner.

2 We have heard learned counsel for the State and learned counsel for the sole respondent at length and with their consent, this appeal is being disposed of at this stage itself.

3 The mother of the writ petitioner late Urmila Devi was a Piece Rate Worker in the Handicraft Investigation Centre, Digha, Patna and in consideration of her good work, she was appointed on the post of Pern Binder on temporary basis for six months and regularized thereafter. She was then promoted. In 1992, a political worker apparently informed that a paper submitted by the mother of the writ petitioner showing that she was literate being a Transfer Certificate given by a school was forged. The mother of the writ petitioner was issued a show cause. Enquiry was made and the authorities came to a finding of fact that the certificate showing that the mother of the writ petitioner had gone to a particular school and was issued a Transfer Certificate was not genuine. She was, accordingly, dismissed from service. She filed a review application before the Director of Industries but during pendency thereof, she died. The review petition was dismissed. The present writ petitioner then challenged the order before this Court in a writ petition. The writ petition was then withdrawn with a direction to prefer statutory appeal against the order of dismissal. In view of the order of this Court, as suffered by the writ petitioner, he filed an appeal before the Industrial Development Commissioner, Bihar, Patna who affirmed the order of

Director of Industries. It is these orders which are now in challenge before the learned Single Judge.

4 In the writ proceedings, State filed a counter affidavit bringing on record that in 1985, the mother of the writ petitioner was asked to give her educational/technical qualification for considering her promotion and it is in response to the said, the Transfer Certificate was submitted by her which was found to be forged. The stand of the writ petitioner was that his mother had never filed the Transfer Certificate but there was no denial that she had never been required to file her educational/technical qualification certificate. The learned Single Judge, noticing various stands of the parties, merely held that he was of the opinion that the mother of the writ petitioner had not produced any certificate much less forged Transfer Certificate. We may notice at this stage itself that there are absolutely no reason given by the learned Single Judge to come to such a finding. State has filed this intra-Court appeal.

5 Learned counsel for the sole respondent, who was the writ petitioner, submitted, supporting the order of the learned Single Judge, that the mother of the writ petitioner never filed the certificate and alternatively, the certificate so filed was not forged.

6 At this stage itself, we may notice that such contradictory plea cannot be permitted for if the mother of the writ petitioner filed no certificate which was the stand earlier then there

can be no question of filing a valid certificate and if a valid certificate was filed then there is no merit in the contention that no certificate was filed.

7 That apart, we are constraint to hold that we cannot uphold the order of the learned Single Judge on two counts. Firstly, there is absolutely no reason given to come to a finding that the petitioner's mother had not filed the certificate. It is now too well established that reasons are link between the facts found and the decision taken. We do not find any reason in the order of the learned Single Judge. Secondly, this Court, while exercising writ jurisdiction under Article 226 of the Constitution, is exercising powers of judicial review. It is not the decision but the decision making process that is in question. This Court is not sitting in appeal as an appellate Court over orders of subordinate authorities while exercising authority of judicial review.

8 For the reasons aforesaid, we are unable to uphold the order of the learned Single Judge and we are constraint to allow the appeal of the State and set aside the order dated 14.09.2011 passed in CWJC No 3269 of 2007.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

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(Jitendra Mohan Sharma, J)