

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1410 of 2012

IN

Civil Writ Jurisdiction Case No. 4802 of 2011

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Anil Kumar, son of Late Mannu Ram, A/37 Kankarbagh Housing Colony, P.O.-
Kankarbagh, P.S.-Kankarbagh, District-Patna, Town-Patna.

.... Petitioner/Appellant.

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna-800001.
2. The Secretary also called Principal Secretary, Secondary, Primary & Adult Education, New Secretariat Building, Patna-800015.
3. The Director, State Institute of Education Technology, Mahendru, Patna now under control of Director, SCERT at present in charge of, State Institute of Education Technology, Mahendru, P.S.-Sultanganj, District-Patna, Town-Patna.

.... Respondents/Respondents.

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Appearance :

For the Appellant : Mr. Ravi Shankar Ganguli, Adv.

For the Respondents : Mr. Shiv Kumar, AC to G.A.-7.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-04-2015

This Intra-Court appeal has been filed by the writ petitioner being aggrieved by the order of dismissal dated 26.07.2011 of the writ petition being C.W.J.C. No.4802 of 2011. We have heard learned counsel for the appellant who was the writ petitioner, learned counsel for the State and with their consent, this appeal is being disposed of at this stage itself.

First, we must take note of a preliminary objection taken by the learned counsel for the State. He submits that the appellant had come to this Court earlier for the same relief which had been denied to him. Thus, the writ application was barred by

res judicata. We are unable to agree to this. Learned Single Judge had also taken a similar view. We do not agree it to be correct. The reason is simple. Before the plea of res judicata can be raised, it must be shown that there had been adjudication. The writ petitioner in the writ petition has annexed the order of this Court when he moved this Court at the first instance. The order is clearly unambiguous. This Court held that in view of insufficient facts available on record, no decision in favour of the writ petitioner could be given. The writ petitioner was then relegated to the departmental authorities who were directed to consider his representation and take appropriate decision in the matter. Thus, this Court did not adjudicate the matter nor did it hold that petitioner was not entitled to the relief prayed for. When the departmental authorities delayed the matter and did not decide, the appellant, who was the writ petitioner, filed a contempt application. During pendency of the contempt application, the departmental authorities ultimately rejected his claim. That order having been brought to the notice of the Court dealing with the contempt proceedings, the Court clearly observed that orders having been passed, liberty was given to the petitioner to challenge that order as he may be advised. Accordingly, contempt proceedings were dropped. Again, there was no adjudication.

Thus, the writ petitioner's contentions remained un-adjudicated by any Court of competent jurisdiction, the question of applicability of res judicata or even constructive res judicata does not apply.

We may note here a distressing fact as well. The writ petitioner, who is the appellant before us, was working in the State Institute of Education Technology (S.I.T.). There were other similarly situated persons. All of them, in separate applications, had moved this Court for similar grievances. The grievance being that they were in the pay-scale of Rs.2200-4000. When pay revision took place, the replacement pay-scale ought to have been Rs.8000-13,500, instead they were granted replacement scale of Rs.6500-10,000. While the appellant's case was dealt with, as noted above, the other writ petitions were taken up and a learned Single Judge of this Court considered the matter on merits and allowed the writ petition, being C.W.J.C. No.12268 of 2001, by judgment and order dated 26.07.2006 (Ranjan Sinha & Anr. Vs. the State of Bihar & Ors.). This Court in the said case of Ranjan Sinha clearly held that the replacement scale entitlement was Rs.8000-13,500, which was said as being claimed by the appellant. Though this writ petition was allowed in the year 2006, State did not bring it to the notice of this Court. When the matter of the contempt application was taken up by this Court at the

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behest of the appellant on 21.12.2009 rather ignoring this writ order, the authorities rejected the representation of the appellant on 15.04.2008. That on the face of it was arbitrary if not mala fide. State is not expected to act in such a partisan manner. However, State appealed against the judgment of this Court passed in the case Ranjan Sinha (supra) by filing a Letters Patent Appeal being L.P.A. No.125 of 2006, which was dismissed on 18.04.2006 fully endorsing and affirming the view of the learned Single Judge granting relief to those writ petitioners. Again, this fact was withheld by the State. When this appellant came to know of these facts as to how he had been treated by the State, he filed the present writ application bringing to the notice of this Court, the entire sequence of events that is his first move to the High Court, disposal of the contempt application, the writ petition by Ranjan Sinha and another, the decision of the Division Bench in Letters Patent Appeal and pleaded for equal treatment. The learned Single Judge dismissed the writ petition summarily, inter alia, holding that

“...The order of the Division Bench or the learned Single Judge would apply to the petitioners who were before the respective Benches. If the petitioner had not approached the

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High Court earlier on the issue and no adjudication was made then there may have been an occasion to draw analogy and apply the reasoning given therein....”

The clear fallacy in the order of the learned Single Judge is that he has proceeded to assume that there had been earlier adjudication in the case of the appellant which we have seen is not correct. Thus, the fact remains that except the appellant, all other similarly situated employees of S.I.T. are getting the revised replacement scale of Rs.8500-13,500 but he has been left out.

Having noted the facts as aforesaid, we are unable to persuade ourselves to leave the appellant remediless against the arbitrary action of the State, for we are of the view as has been held by the Apex Court in the case of **M/s Hindustan Sugar Mills Vs. The State of Rajasthan and others** since reported in **AIR 1981 Supreme Court 1681**, which is quoted hereunder:-

“.....In a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness

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and justice demand.”

Yet again, we may point out that in the case of **Ashwani Kumar and others Vs. State of Bihar and others** since reported in **AIR 1997 Supreme Court 1628**, this is what their Lordships observed in paragraph-17, which is quoted hereunder:-

“17.Nor can we say that benefit can be made available only to 1363 appellants before us as the other employees similarly circumscribed and who might not have approached the High Court or this Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced under Articles-14 and 16 (1) of the Constitution of India.....”

There is yet another reason that is Clause-4 (c) (i) of the Bihar State Litigation Policy, 2011, which obliges State, in clear terms, to grant relief to similarly situated persons pursuant to orders of this Court without rushing to this Court seeking the same relief.

Thus, on the facts aforesaid, there being no facts to

distinguish the case of this appellant from the case of Ranjan Sinha (supra), in our considered view, the same relief has to be given and cannot be denied to the appellant. Apart from the technical objection as raised by the State no other distinguishing facts has been brought on record.

For the reasons aforesaid, we allow this appeal and set aside the judgment and order of the learned Single Judge. The order of this Court would be implemented by the respondents completely with all consequential reliefs within a period of three months. The obligation for timely implementation of orders of this Court would squarely be on the Principal Secretary, Department of Higher Education, Government of Bihar, Patna (respondent no.2).

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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