

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 22 of 2008

IN

Civil Writ Jurisdiction Case No 12612 of 2004

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- 1 The State of Bihar
 - 2 The Secretary, Animal Husbandry and Fisheries Department, New Secretariat Building, Patna
 - 3 The Deputy Secretary, Animal Husbandry and Fisheries Department, New Secretariat Building, Patna
 - 4 The Additional Secretary, Animal Husbandry and Fisheries Department, New Secretariat Building, Patna
 - 5 The Director, Animal Husbandry, New Secretariat Building, Patna
 - 6 The Commissioner –cum- Secretary, Department of Finance, Bihar, Patna
- Appellant/s

Versus

Kanti Devi, wife of late Dr Bipin Bihari Singh, resident of Village – Purania, Police Station – Bihta, District – Patna, at present – resident of Club Road, Katira, Opposite – Home Guard Office, Police Station – Nawada, Ara, District – Bhojpur, 802 301

.... Respondent/s

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 04-05-2015

State is in appeal against the judgment and order dated 27.08.2007 passed in CWJC No 12612 of 2004 (Dr Bipin Bihari Singh –Versus- State of Bihar & Others). We have heard Shri Roy Shivaji Nath, learned AAG III and Shri Bindhyachal Singh at length.

2 The issue involved in the present case is short. The original writ petitioner, who was the original sole respondent, had been absenting from duty for various periods. He was a Touring Veterinary Assistant Surgeon under the Department of Animal Husbandry, Government of Bihar. He filed the writ petition

challenging part of the notification dated 13.06.2003 issued by the State Government in the Department of Animal Husbandry and Fisheries whereby his period of abstention was divided into three periods. The first period being 04.10.1978 to 01.02.1979, a period of 120 days which was sanctioned as Earned Leave. There is no grievance. The second period was 02.07.1979 to 07.03.1980 a period of 400 days which was sanctioned at half leave. There is no dispute in this regard. The third period was 08.03.1980 to 08.05.1994 which was sanctioned as extraordinary leave without pay and it is this period that was put in issue in the Writ Court. In the Writ Court, reference was made to Annexure 1 which was notification issued by the State Government in the Department of Animal Husbandry and Fisheries (Animal Husbandry) dated 04th November, 1995 under the orders of the Governor of Bihar. In this notification, it was clearly mentioned that the petitioner's joining in the Department was accepted as on 18.09.1987. With reference to the aforesaid, the writ petitioner urged that so far period as between 18.09.1987 and 08.05.1994 when he was issued formal orders of joining at Dumka, he was waiting for posting and if that be so then he cannot be denied his wages/remunerations for the said period. Before the Writ Court, as apparent from the order under challenge, the correctness or authenticity of the said notification issued by the State Government being notification dated 04.11.1995 was not challenged but what was urged was that as the writ petitioner

merely waited for posting and did not work, he would not be entitled to any remuneration for the said period. The Writ Court rejected the stand of the State noticing that once the notification was not in challenge or not in dispute, State not having assigned work to the writ petitioner, State cannot be heard to deny remuneration for the said period. In this intra-Court appeal, the learned Additional Advocate General submits that in fact the original writ petitioner/original sole respondent was absent all along and the notification dated 04.11.1995 does not appear to be correct. It was issued at the instance of the Minister in the year, 1995 in respect of joining on 18.09.1987 but at the same time, he is not in a position to challenge the authenticity of the said notification issued in the name of the Governor.

3 We have considered the matter and in our view, the judgment and order of the learned Single Judge is correct and needs no interference. Firstly, we must dispel this concept of no work no pay which is being repeatedly raised by the State to deprive its employees of their rightful remuneration. In the case of *Nirmal Chandra Bhattacharjee & Others –Versus- Union of India & Others* since reported in *1991 Supp (2) Supreme Court Cases 363*, the Apex Court has clearly held that the mistake or delay on part of the Department should not be permitted to recoil on the appellants (employees). Thus, where there was delay on part of the Government to promote a person, the plea of no work no pay for the promotional

post was not permitted to be raised by the Apex Court. Similarly, in the case of *Union of India –Versus- K V Jankiraman, AIR 1991 Supreme Court 2010*, this is what their Lordships said in paragraph 7:

“... .. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.”

4 Thus seen, where the State is not in a position to deny its notification dated 04th November, 1995 notifying that the writ petitioner/original sole respondent had joined and his joining had been accepted with effect from 18.09.1987 and, thereafter, he was formally posted at Dumka on 08.05.1994 for the period in between he has rightly claimed to be waiting for posting and for that period, he cannot be denied his full remuneration. Learned Single Judge was correct.

5 We may notice yet another fact. The question is can the State Government or can any officer of the State Government challenge a notification issued by the State Government in any manner. In other words, can the right hand of the Government challenge the action done by the left hand. To say the least, we are amazed. If the Government thinks that a notification has been wrongly issued, it has the authority to follow the same procedure and

rescind the notification but without rescinding the notification, no officer of the Government has the authority to challenge the correctness or validity of the notification issued by the Government and that too in the name of the Governor. In terms of Article 161 of the Constitution of India, State is precluded from challenging its own notification.

6 In view of the aforesaid, we find no merit in this appeal. It is, accordingly, dismissed.

7 As the original writ petitioner, who had superannuated and had since died, has been substituted by his widow during pendency of this appeal, it is expected that as this Court had stayed the judgment of the learned Single Judge by order dated 10.01.2008 which stands vacated by dismissal of this appeal, State would forthwith pay the amount to the widow Kanti Devi who has been substituted vide order dated 18.09.2014 passed in MJC No 986 of 2014.. State shall take expeditious steps to clear the dues and not later than three months from today.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Rajendra Kumar Mishra, J)

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