

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10098 of 2011

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1. Ashok Kumar Sanyal, son of Late Anang Bhushan Sanyal, resident of Alpana Niketan, Swami Vivekanand Path, Adampur, Bhagalpur
2. Mahesh Prasad Singh, son of Sri Mungeshwar Pd. Singh, resident of village-Pattu Bigha, P.S.-Makdumpur, Distt.-Jahanabad

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Road, Construction Department, Govt. of Bihar Patna
2. The Engineer-in-Chief, Road Construction Department, Govt. of Bihar, Patna
3. The Chief Engineer, Central Design Organization Road Construction Department, Govt. of Bihar Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Singh, Adv.

For the Respondent/s : Mr. AC to GP-9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 07-01-2016

Heard Sri Dharmendra Kumar Singh, learned counsel for the petitioners and learned AC to GP-8.

2. Two petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an order, contained in Memo no.809 dated 22.11.2010 (Annexure-7 to the writ petition) issued under the signature of the Chief Engineer, Central Design Organisation (Respondent no.3). By the said order, the representation filed by petitioner no.2 was rejected. The petitioner no.2 by way of filing representation in view of order dated 08.08.2008 passed in a writ

petition i.e. C.W.J.C.10897 of 2006 had claimed salary for the period , during which he was not allowed to work since he was removed from service. The period of salary, which has been claimed, is in between 04.12.2000 and 05.04.2005.

3. Short fact of the case is that both the petitioners along with one another were removed from service by order dated 04.12.2000(Annexure-2 to the writ petition) on the ground that their appointments were made by unauthorised persons. Aggrieved with the removal order, the present petitioners approached this Court by filing a writ petition vide C.W.J.C.No.1804 of 2001. The said writ petition was allowed on 07.07.2004 exercising equity in favour of petitioners. The order of removal was set aside with direction to reinstate the petitioners on their substantive posts with due date. Even though, the writ court allowed the writ petition and directed for reinstatement, for a long period, the petitioners were not allowed to join, which compelled the petitioners to file a contempt petition vide M.J.C. No.438 of 2005. During pendency of the contempt petition, a show cause was filed by the Opp.Parties and along with show cause, fresh appointment letters were brought on record. Further case of the petitioners is that subsequently the petitioners filed a separate writ petition vide C.W.J.C.No.10897 of 2006, which was disposed of



on 08.08.2008 granting liberty to the petitioners to represent before the concerned Respondents in respect of claim of back-wages. Thereafter, it has been claimed by the petitioners that petitioners filed representation before the competent authority in terms of order passed in C.W.J.C.No.10897 of 2006. However, the claim of the petitioners was rejected by the impugned order i.e. order contained in Memo No. 809 dated 22.11.2010, which has been assailed in the present writ petition.

4. Learned counsel for the petitioners assailing the impugned order submits that both the petitioners were illegally removed from the service, which was quashed by this Court and direction was given to be reinstated. Initially, instead of reinstating the petitioners, the Respondents illegally issued fresh appointment letters and finally, after disposal of the writ petition, on second occasion, both the petitioners filed representation, but to the reasons best known to the concerned authority i.e. the Chief Engineer in the order impugned, it has been indicated that only the petitioner no.2 had filed representation, not petitioner no.1 and the claim of petitioner no.2, too, was rejected without any cogent reason. Accordingly, the petitioners make a prayer for quashing the impugned order and directing the Respondents to make payment of salary for the period from 04.12.2000 to 05.04.2005.



5. In this case, a counter affidavit has been filed on behalf of Respondent nos.1 to 3. In the counter affidavit, a specific stand has been taken that after disposal of the second writ petition i.e. C.W.J.C.No.10897 of 2006, only petitioner no.2 had filed representation and, as such, the case of petitioner no.1 may be rejected on the ground that he had never filed any representation before the authority concerned. So far as claim of petitioner no.2 is concerned, it has been argued by learned State Counsel that on the principle of “no work no pay”, the petitioner has not been granted relief for salary for the said period. He has argued that after the order was passed in the contempt petition, the earlier defect, which had occurred by way of issuance of fresh appointment letters, the period during which the petitioners remained not in service in view of issuance of order of termination, the said period was regularised for all purposes save and except monetary benefit. He further submits that once after disposal of the first writ petition i.e. C.W.J.C.No.1804 of 2001, the petitioners approached this Court for implementation of the order and in contempt proceeding the fact was brought to the notice of the Court regarding reinstatement, without any further direction either by the Court hearing contempt petition or in the first writ petition for payment of wages for the period during

which the petitioners were not in service, the petitioners are not entitled to claim their salary.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. The petitioners were removed from service in the year 2000. The removal order was assailed by the petitioners before this Court in C.W.J.C.No.1804 of 2001. The said writ petition was allowed on the principle of equity and direction was given to reinstate the petitioners. At the time of passing order, whereby the impugned order for removal was set aside, no specific direction was given to reinstate the petitioners with back wages. Once in a litigation preferred by the petitioners, relief is not granted, at subsequent stage before the same Co-ordinate Bench one is not entitled to claim the same relief. Even then the petitioners filed second writ petition vide C.W.J.C.No.10897 of 2006, which was disposed of on 08.08.2008. On perusal of the order dated 08.08.2008 (Annexure-6 to the writ petition), it appears that the fact regarding order passed in M.J.C.No.1974 of 2006 was not noticed by this Court. Even on second occasion i.e. order dated 08.08.2008 passed in C.W.J.C.No.10897 of 2006, this Court had observed as follows:

“The grant of back wages, it is now settled by

several decisions of the Apex Court, is not automatic but shall depend on the facts and circumstances obtaining in each case. In the present case, when reinstatement was ordered by this Court, no directions for back wages were given. For that reason, this Court finds it difficult to grant that relief now at a subsequent stage of the same litigation.”

7. Moreover, on an allegation of non-implementation of earlier order passed by this Court in C.W.J.C.No.1804 of 2001, the petitioners had filed a contempt petition vide M.J.C.No.438 of 2005, which was dismissed on 28.04.2006 on examining the show cause showing compliance of the order. The said order has been brought on record as Annexure-A to the counter affidavit. After dismissal of the contempt petition, the petitioners filed a modification petition vide M.J.C. No.1974 of 2006, which was disposed of by following order:

“Heard.

This application has been filed for modification of the order dated 28.04.2006 passed in M.J.C. No.438 of 2005.

It is submitted by counsel for the petitioners that through the petitioners have been re-appointed, but not with due dates, as directed by this Court in C.W.J.C. No.1804 of 2001.

From the order passed by this Court in C.W.J.C.No.1804 of 2001 it appears that the petitioners

were directed to be reinstated on their substantive post with due dates.

According to the case of the petitioners, the petitioners have been re-appointed but not with due dates.

In view of the order passed by this Court as referred to above, counsel for the petitioners will be at liberty to represent their cases before the authorities concerned for their appointments in true terms and spirit of the order which would be considered and disposed of in accordance with law in the light of the order passed by this court, as referred to above.

With this direction/observation, this application is disposed of”

8. While disposing of the modification petition i.e. M.J.C. No.1974 of 2006, a Bench of this Court granted liberty to the petitioners to represent their case before the authority concerned. It appears from the record that in view of order passed by this Court on 08.09.2006 in M.J.C.No.1974 of 2006, no representation was filed. However, after the order passed in the second writ petition i.e. C.W.J.C.No.10897 of 2006, representation was filed, which has been disputed by the Respondent that representation was filed only by petitioner no.2, not by petitioner no.1. However, the petitioners by way of filing rejoinder have disputed the claim of the Respondents/ State. It has



been pleaded that both the petitioners had filed representation. Surprisingly, the order impugned i.e. Annexure-7 to the writ petition makes it clear that the authorities concerned had only noticed representation of the petitioner no.2 and it was observed that the petitioner no.1 had not filed any representation. Though in the main writ petition, the said order i.e. Annexure-7 to the writ petition was assailed at the time of filing of the writ petition, no plausible document was brought on record to show that both petitioners had filed representation in terms of the said order.

9. Be that as it may, this Court is not at all inclined to go into such dispute, but fact remains that while the first writ petition was allowed, which was allowed on equity, this Court had not at all directed for reinstatement with back-wages. In absence of any such direction, the Respondents have rightly denied the claim of the petitioners for salary for the period, during which the petitioners remained out of service on principle of “no work no pay”. Learned counsel for the petitioners has also placed reliance on a Judgment of this court, reported in **2001(1) PLJR 187; Asha Kumari & Anr Vs. State of Bihar & Ors.** and submits that once the order of removal was set aside, the petitioners were entitled to get salary for the period of removal. However, on going through the said order, the Court is satisfied that the petitioners, in

view of facts and circumstances of the present case, are not entitled to get the relief as sought for.

10. In view of facts and circumstances, I do not find any ground to pass any positive order in favour of the petitioners. The writ petition stands dismissed.

(Rakesh Kumar, J)

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