

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16428 of 2012

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The State of Bihar, through the Principal Secretary, Home Department, Bihar, Patna

.... Petitioner/s

Versus

1. The Bihar Human Rights Commission through its Secretary, 9, Bailey Road, Patna
2. Sheo Dayal Ray, S/O Late Mahendra Ray, Resident of C- 132, Police Colony, Anisabad, P.S. Gardanibagh, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Pramod Kumar Sinha, AC to AAG-2

For Respondent No. 2 : Mr. Deepak Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-01-2016

Heard.

The petitioner State of Bihar, by filing the present writ application assails the part of order dated 26.03.2012, passed by the Chairperson, Bihar Human Rights Commission (for short the Commission) in File No. BHRC/Comp. 420/11 whereunder a sum of Rs. 50,000/- was directed to be paid to respondent no. 2 as compensation. The Commission observed as under :

“The Commission is of the view that the applicant should not only be paid the sum of Rs. 303038 as per determination of the Directorate of Provident Fund vide authority slip dated 27.04.2010, he should also be paid compensation which may to some extent mitigate the hardships and harassment which he and his family members

have suffered over a period of time. In the facts and circumstances, the commission would quantify the compensation at rupees fifty thousand. The applicant should thus be paid sum of Rs. 3,53,038. The Commission would grant six weeks time and direct the Principal Secretary, Department of Home (Police) to make payment within this period.

It is open to the State Government to recover the additional amount (paid by way of compensation) from the salary of the officials responsible for the delay and harassment. According to the applicant, the officials responsible are (i) Shri Abhijit Sinha, Director-General of Prosecution, (ii) Shri Jai Prakash Singh, Deputy Director, Prosecution (Hqrs.) and (iii) Shri Ranjit Shankar Prasad, Assistant Prosecution Officer (Hqrs.). Principal Secretary, Department of Home may get their role examined and if they are indeed found to be guilty, to make recovery from their salary in accordance with law.”

Contention of the petitioner is that the Commission erred in exercising the jurisdiction as a writ petition being C.W.J.C. No. 5148 of 2012 was pending in High Court and even during pendency thereof respondent no. 2 filed the aforesaid application before the Commission. In such circumstance, the

Commission would get jurisdiction only when an approval was granted by the Court.

Per contra, Mr. Sinha counsel for respondent no. 2 has submitted that the writ application was filed questioning the correctness of the order dated 09.03.2011, passed by the Director General, Directorate of Prosecution holding that the petitioner was not entitled to up-to-date interest upon the G.P.F. amount. He was entitled to interest accrued on the date of his termination/ dismissal from service i.e. 16.07.1996. No complain of breach of human rights of the petitioner and therefore compensation was raised therein. Section 12(a) and (d) of the Protection of Human Rights Act, 1993 read as under :

12(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any Court, into complaint of-

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court; ”

On bare reading of the aforesaid provision, it appears that the Commission has the jurisdiction to pass such order if

it is found that the State Respondent was negligent in violation of Human Rights on the subject. Section 12(b) only postulates pendency of the proceeding before the Court in respect of such claim. There is nothing on record from where it can be found that respondent no. 2 in the pending writ petition had complained of violation of human rights and compensation therefor. It was a writ petition questioning the legality of an order.

Considering the above, in my view, no illegality, much less patent illegality, has been committed by the respondent Commission in passing the impugned order. If that be so, the invocation of the discretionary writ jurisdiction of this Court in favour of the petitioner shall be an inappropriate exercise of the jurisdiction.

The writ application fails. It is dismissed.

(Kishore Kumar Mandal, J)

Rajesh/-

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