

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18954 of 2008

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Mostt. Kaushalya Devi, W/o Late Munshi Ram, resident of village – Bari Milki,
P.O. + P.S. – Rajgir, District – Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna
2. The Chief Engineer (Mechanical) , P.H.E.D., Bihar, Patna
3. The Superintending Engineer, P.H.E.D., Anchal , Patna
4. The Executive Engineer, P.H.E.D., Biharsharif, Nalanda
5. The Assistant Engineer, P.H.E.D., Sub Division Rajgir, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : AC to SC No. 3

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 04-05-2017

1. It is a glaring case of example of harassing a widow, who was initially appointed on compassionate ground long back in the year 1982. Despite the fact that earlier illegal action taken by the respondents was set aside and a Bench of this Court had categorically said that the petitioner's appointment on compassionate ground was in permanent establishment, still after order of the writ Court dated 17.04.2006 passed in CWJC No. 7005 of 2004 instead of restoring the status of the petitioner as was available prior to issuance of Annexure '4' to the writ petition, by order contained in Memo No. 1959 dated 6.12.2006 (Annexure 9) the Respondent No. 4 has passed an order as if the petitioner has been adjusted on a newly created post with effect from the date of her joining.



2. Heard Sri Pramod Mishra, learned counsel for the petitioner and learned AC to SC No. 3. The petitioner, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India with a prayer to issue writ of mandamus commanding the respondents to modify the Office Order No. 1959 dated 6.12.2006 (Annexure -'9' to the writ petition) issued under the signature of Executive Engineer, Public Health Engineering Division , Biharsharif. By the said order the respondents had proposed to adjust the petitioner in permanent establishment which was directed to be given effect from the date of her joining on new post.

3. Short fact of the case is that the husband of the petitioner was in the permanent establishment of the Government and while he was in service he died on 2.6.1982. Thereafter the petitioner being widow of the deceased employee applied for being appointed on compassionate ground and finally vide Annexure '1' to the writ petition i.e. Office Order No. 179 dated 17.12.1982 the petitioner was appointed in the pay scale of Rs. 350 – 425 /-. While the petitioner was discharging her duty after being appointed on compassionate ground after more than 20 years the respondents decided to revert the petitioner as daily wager and consent from the petitioner was sought for regarding her reversion (Annexure '4' to the writ petition) vide Memo No. 5175 dated 21.8.2003. Aggrieved with the said



communication the petitioner approached this Court by filing a writ petition vide CWJC No. 7005 of 2004 and this Court considering the fact that petitioner was appointed on compassionate ground and she was in permanent establishment quashed the order dated 21.8.2003. It would be appropriate to incorporate entire order dated 17.04.2006 as follows:-

“No one appears on behalf of the respondents.

From Annexure – 3 and 3 (1) to the writ petition, it would be evidenced that the husband of the petitioner was a permanent employee of the Government. From Annexure – 1 to the writ petition, it would be evidenced that the husband of the petitioner died on 2nd June, 1982. From Annexure – 2 to the writ petition, it would be evidenced that in view of the death of the husband of the petitioner occurred while he was in service, a compassionate appointment was given to the petitioner. This appointment was given to the petitioner as far back as on 17th December, 1982. By the impugned order dated 21st August, 2003, the said appointment of the petitioner on compassionate ground has been cancelled and she was converted into a daily wage worker. Only reason of issuing the impugned order was that the petitioner had been appointed in the work charge establishment. The impugned order does not show that before the same was issued, it had been taken into account that the appointment of the petitioner was accorded on compassionate ground, which can only be accorded in the permanent establishment.

In such view of the matter, the impugned order dated 21st August, 2003 is quashed and the writ petition is, accordingly, allowed.

This disposes of the writ petition.”



4. After the order of this Court whereby the order dated 21.8.2003 which has been brought on record as Annexure - '4' to the writ petition was set aside, in normal course the position of the petitioner was required to be restored in compliance with the order of this Court, but to the reasons best known to the authority concerned vide Annexure '9' to the writ petition, the respondents instead of restoring the status of the petitioner decided to adjust the petitioner in view of order dated 6.12.2006 and directed that her services shall be considered from the date of her joining new post.

5. Sri Mishra, learned counsel for the petitioner submits that it was a glaring case of intentional disobedience to the order of the writ Court. He submits that this Court had already held that the petitioner was in permanent establishment and the order whereby her status was reverted to daily wager was set aside and as such the respondents were required to simply restore the status of the petitioner. There was no reason to pass an order as if the petitioner was being adjusted with effect from the issuance of the order dated 6.12.2006. Accordingly, a prayer has been made to direct the respondents to modify the order or to direct the respondents to restore the status of the petitioner which was prevailing on the date of issuance of Annexure - '4' to the writ petition with all



consequential benefits.

6. In this case a counter affidavit was filed on behalf of the respondent nos. 1 to 5 duly executed by the Superintending Engineer, P.H.E.D., Anchal -Patna. Learned state counsel submits that after the order dated 21.8.2003 (Annexure -'4' to the writ petition) the petitioner herself had given her consent. Accordingly, he tried to justify the stand of the respondents.

7. The petitioner has also filed rejoinder to the counter affidavit. Learned counsel for the petitioner has drawn my attention to the statement made in paragraph no. 10 of the counter affidavit and submits that the statement made in paragraph no. 10 is itself contemptuous. He submits that once the writ petition i.e. CWJC No. 7005 of 2004 was allowed by this Court and this Court had set aside the order dated 21.8.2003 (Annexure '4' to the writ petition) there was no reason to make such statement. Had the respondents filed a review petition, matter would have been different.

8. Besides hearing learned counsel for the parties, I have perused the materials available on record. Prima facie on perusal of Annexure '9' to the writ petition as well as the statement made in paragraph no. 10 of the counter affidavit, the Court is of the opinion that stand of Respondent State is contemptuous. After disposal of the writ petition i.e. CWJC No. 7005 of 2004, had it been a case of



mis-statement, the respondents were well entitled to approach this Court for review of the order. But once the order of the writ court had attained its finality, there was no reason to make such statement. It would be just and proper to incorporate the statement made in paragraph no. 10 of the counter affidavit, which is as follows:-

“10. That, a bench of the Hon’ble High Court, Patna on 17.04.06, after hearing the writ petitioner, quashed the order dated 21.08.03 from the order dated 17.04.06, it appears that none appeared on behalf of the Respondent. It is stated that, the petitioner in the writ application bearing C.W.J.C. No. 7005 of 2004 at para – 5 had wrongly stated, only with an intention to mislead this Hon’ble Court that she was provided compassionate appointment on the post of “Malin” under Public Health Division, Rajgir, vide office order no. 179 dated 17.12.1982.”

9. It is really unfortunate that senior officials who are filing affidavits and making statement on oath are behaving in such irresponsible manner. In any event after the order of the writ court the respondents were not authorized to make such statement in the counter affidavit. Had it been a case of review or modification of the earlier order, matter would have been different. While contesting writ petition such statement was required to be avoided. In the aforesaid facts and circumstance, in sum and substance, the Court is of the opinion that in view of the order dated 17.04.2006 passed in CWJC No. 7005 of 2004 the respondents were required to restore the



status of the petitioner, which was prevailing prior to issuance of the order dated 21.8.2003 in compliance with the order of the writ court dated 17.4.2006 passed in CWJC No. 7005 of 2004. Accordingly, the order contained in Memo No. 1959, dated 6.12.2006 (Annexure ‘9’ to the writ petition) is directed to be modified to the extent to restore the status of the petitioner as was available prior to issuance of Memo No. 5175, dated 21.8.2003 (Annexure – 4 to the writ petition) with all consequential benefits. All the formalities must be completed within a period of two months from the date of receipt / production of a copy of this order.

10. The writ petition stands allowed. Accordingly, the respondents are directed to modify the order contained in Annexure ‘9’ to the extent that in place of adjustment of services of the petitioner with the date of issuance of Annexure -‘9’ it will be deemed that the status of the petitioner was restored as was available prior to issuance of the order dated 21.8.2003 (Annexure 4 to the writ petition).

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10-05-2017
Transmission Date	N/A

