

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3131 of 2014

In

Civil Writ Jurisdiction Case No. 12295 of 2007

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Umapati Devi, Wife of Sri Madan Kumar, resident of Mohalla Bari Tola,
Mahadewa, P.O.+P.S.- Buxar, District Buxar

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Buxer
3. The Deputy Development Commissioner, Buxer
4. The Sub Divisional Magistrate, Buxer
5. The Child Development Project Officer, Brahampur, Buxer
6. The District Welfare Officer, Buxer
7. Madhuri Devi, W/o Sri Sunil Kumar Sinha, Resident of Baritola Police
Station Buxer Nagar, Dist. Buxer

.... Opp.Parties.

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh

For the Respondent/s : Mr. Arvind Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

9 24-03-2017 Heard Sri Bipin Bihari Sinha, learned counsel for
the petitioner and learned AC to SC-20.

The present petition has been filed with a prayer to
recall/modify the order dated 09.01.2013 passed by a Bench of
this Court (Hon'ble Mr.Justice Navin Sinha as he then was) in
Civil Review No.438 of 2012.

Learned counsel for the petitioner tried to persuade
the Court that without impleading the petitioner in review petition,
the Respondent no.7 in the writ petition i.e. C.W.J.C.No. 5819 of
2010 get the order reviewed. However, on perusal of the order



dated 09.09.2011 passed in C.W.J.C.No.5819 of 2010, it is evident that conditional order was passed by the writ court. It would be appropriate to quote last but one paragraph of page-2 of the order dated 09.09.2011 passed in C.W.J.C.No.5819 of 2010 in the writ petition:

“The Court is left with no option but to now issue a mandamus to the Director, ICDS that he shall within 72 hours of the production of this order before him ensure full compliance of the order of the District Magistrate, removing Respondent no.7 from service dated 08.10.2007 unless already complied with or that order has been varied modified and or annulled in any proceeding at the behest of Respondent no.7.”

In the writ petition, despite the fact that Respondent no.7 had received notice, she had preferred not to appear nor any counter affidavit was filed in the writ petition. After the order was passed by the writ court, the authority concerned without properly appreciating the direction of this Court took steps for cancelling the selection of the Respondent no.7 of the writ petition, namely, Madhuri Devi. Immediately, thereafter, Respondent no.7 of the writ petition approached this Court by filing a review petition vide Civil Review no. 438 of 2012. In the said review petition, the petitioner of the present modification petition was initially arrayed as Opp.Party no.7, but



subsequently her name was deleted. All those facts were noticed by this Court in Civil Review no.438 of 2012 and considering the fact that the order of the writ court was not properly implemented, this Court by its order dated 09.01.2013 clarified the position and disposed of the review petition. The Court proposes to incorporate the order dated 09.01.2013 passed in Civil Review No.438 of 2012,

“Learned counsel for the petitioner prays for leave to delete respondent No.7. Let it be so done at the risk of the petitioner.

This application seeks review of the order dated 9.9.2011 passed in C.W.J.C. No.5829/10.

Learned counsel for the petitioner submits that compliance of her termination order dated 8.10.2007 by the authorities was ordered with a rider, that unless it had been “varied, modified and/or annulled in any proceeding at the behest of respondent No.7”, (the present petitioner).

The petitioner had earlier preferred C.W.J.C. No.1386/10 against the termination. On 8.3.2010, the Court permitted her to represent. On 3.5.2010 after considering the representation she was reinstated much prior to order dated 9.9.2011. Since the interest of the petitioner was already protected in the order dated 9.9.2011 and the contingency stood fulfilled, she bona fide did not consider it necessary to appear and expected the respondent authorities to act prudently and not



mechanically. Nonetheless, they mechanically terminated her appointment on 17.9.2011 pursuant to the order dated 9.9.2011 in C.W.J.C. No.18322/11 questioning the order dated 17.9.2011 came to be dismissed on 25.11.2011. The protection granted to the petitioner in the order dated 9.9.2011 appears not to have been brought adequately to the attention of the Court. The petitioner is now left completely remediless in the circumstances and has been compelled to file this review application more in the nature of a modification/clarification.

Learned counsel for the State submits that the issue has attained finality with the dismissal of C.W.J.C. No.18322/2011. The remedy for the petitioner appropriately lay in preferring an appeal against the same.

Procedures are a handmaid of justice. A pedantic approach to procedures may prove counter productive by not only denying justice to a litigant but also inviting unnecessary burden upon the Court. The petitioner was removed on 8.10.2007. On 8.3.2010 she was permitted to represent. She stood reinstated by the authorities on 3.5.2010. The order dated 9.9.2011 had ordered implementation of order dated 8.10.2007 subject to its not having been varied, modified or annulled on a challenge. The order was therefore contingent. The contingency already stood fulfilled on 3.5.2010. There was no occasion for the authorities to purposefully misinterpret or wrongly appreciate the orders of the



Court, and ignore the contingency. Unfortunately, the petitioner must also bear a part of the blame when she did not appear in C.W.J.C. No.5819/10 despite notice, though the explanation given by her cannot be rejected outright as fanciful keeping in mind the nature of the appointment.

The contingent nature of the order in C.W.J.C. No.5819/10 and that the contingency stood fulfilled when C.W.J.C. No.18322/11 was being dismissed does not appear to have been adequately brought to the attention of the Court.

In conclusion, the contingency mentioned in the order dated 9.9.2011 having been fulfilled on 3.5.2010 itself there was no occasion for the respondents to terminate the petitioner in the garb of the order dated 9.9.2011. Learned counsel for the petitioner has produced the original termination order for perusal by the Court. It simply states that her services were being terminated in accordance with the order of the Court dated 9.9.2011 enforcing the order of the District Magistrate dated 8.10.2007. The Court is constrained to observe that a little caution on behalf of the Child Development Project Officer including consultation with the Government Pleader at the District level may have saved not only unnecessary litigation but also public money by the State having to contest the present litigation.

The application is allowed with the aforesaid clarification that the contingency in the order dated



9.9.2011 having been fulfilled on 3.5.2010, the termination dated 17.9.2011 is in teeth of the order dated 9.9.2011 itself. The petitioner has naturally to be deemed to be in service as order dated 3.5.2010 has not been assailed by any. In the peculiar facts of the case where she must bear a part of the blame also, the question of any orders for honorarium for the period that she did work does not arise.

The application stands disposed.”

After going through the aforesaid order, the Court is satisfied that there is no ground in the present petition to review/ recall the order dated 09.01.2013 passed in Civil Review no.438 of 2012.

Accordingly, the present petition stands dismissed.

(Rakesh Kumar, J)

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