

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.897 of 2012
IN
Civil Writ Jurisdiction Case No. 13551 of 2002**

- =====
1. The State Of Bihar
 2. The Chief Secretary, Government of Bihar, Patna
 3. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna
 4. The Special Secretary, Cabinet (Vigilance) Department, Government of Bihar, Patna

.... Appellant/s

Versus

Renuka Rani W/O Chandra Mauli Mishra Resident of Government Flat No. 55/800, Shastri Nagar, P.S. - Shastri Nagar, District- Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, AC to GA 4

For the Respondent/s : Mr. Mahendra Pathak, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 17-07-2017

The State is assailing the order dated 09.09.2011 passed by a learned Single Judge in CWJC No.13551 of 2002. The private respondent, who is the wife of a former employee of the State Government, filed the writ application for a direction upon the State authorities to provide her compassionate appointment as well as settle the claims of her husband, who had gone missing since 07.05.1994. Till date he has not been heard of and, therefore, it was the stand of the private respondent that the presumption under Section 108 of the Indian Evidence Act will kick in and the private respondent being the



legally wedded wife is entitled to the benefits, which she was claiming from the State Government.

2. There are stories, which were set up by the State with regard to the status of the husband of the private respondent or the writ petitioner. Certain controversy with regard to his date of birth or existence of two matriculation certificates was also introduced and the State authorities informed the Court that even a criminal case was instituted.

3. Those aspects of the matter do not have much significance because we do not find from the reading of the order of the learned Single Judge that there was any serious contest with regard to the appointment of the husband of the private respondent in the year 1975 and his continuance as a government servant till he went missing in the year 1994.

4. What is further of significance that in earlier round of litigation nothing much by way of resistance was put up by the State authorities and, therefore, a direction was issued upon them to do the needful. When nothing happened and the second round of litigation started then all kinds of plea was taken that the man was missing, he was issued notice, enquiry was held and certain orders were passed detrimental to his interest.

5. When the learned Single Judge called for the original



file to verify the authenticity of the plea taken by the State, some kind of begotten document was produced, which did not convince the learned Single Judge that the State authorities have proceeded against the husband of the private respondent in a fair and square manner. In fact, the learned Single Judge in paragraph 16 onwards of the impugned order had this to say on such issue.

“16. So far the alleged proceeding against the husband of the petitioner is concerned, only two orders have been produced by the respondents, namely (i) order dated 22.11.1995 (Annexure-A) by which the husband of the petitioner was suspended and departmental proceeding was initiated and (ii) order dated 27.07.2002 (Annexure-12) by which the service of the husband of the petitioner was terminated. No other document with regard to the said proceeding has been produced nor even any notice or show-cause sent to the petitioner either before his suspension or before his termination has been produced which clearly shows that entire proceeding was absolutely sham and frivolous about which no mention had been made by the respondents in the earlier writ petition bearing C.W.J.C. No.1544 of 2002. Thus it is quite apparent that the said documents were created as an after thought merely for the purposes of this writ petition and no reliance can be legally placed on them.

17. So far three charges against the petitioner in the alleged proceeding are concerned, they are enumerated in order dated 22.11.1995 (Annexure-A), namely (i) getting appointment on the basis of a forged certificate; (ii) keeping more than one wife; and (iii) remaining absent from service since 02.05.1994.

18. So far the first two charges are concerned, the respondents have failed to produce any material either



before the authorities or before this court to prove the same, although in absence of petitioner's husband the authorities were duty bound to pass such order only on the basis of materials available on record. They could neither prove that the certificate produced by the husband of the petitioner was a forged one nor they were able to prove that the husband of the petitioner had more than one wives nor any other lady ever came forward to claim to be his wife.

19. So far the third and last charge against the petitioner is concerned, it is not in dispute that the husband of the petitioner has remained traceless since 07.05.1994 but there is nothing to show that after 07.05.1994 he was alive nor the respondents even claimed him to be alive in the earlier writ petition filed by the petitioner bearing C.W.J.C. No.1544 of 2002 although the onus was squarely upon them to claim and prove the same. Furthermore, after the husband of the petitioner having remained traceless for more than seven years and also after passing of order dated 08.02.2002 (Annexure-9) by a Bench of this court in C.W.J.C. No.1544 of 2002 under the provision of section 108 of the Evidence Act and the Government Circular dated 24.02.1990 there was no occasion for the authorities to pass the impugned order dated 27.07.2002 (Annexure-12) terminating the services of the husband of the petitioner treating him to be alive for which there was no reliable material at all.

20. Considering the matter in its entirety, it is quite apparent that the acts of the respondents and their assumption in the impugned orders dated 08.08.2002 (Annexure-10) and 27.07.2002 (Annexure-12) are not only baseless, illegal and perverse rather they are mischievous and baneful to the extent of harming a hapless widow, who has been running from pillar to post for her rightful claim."

6. This Court while sitting in appeal is not willing to



allow the State authorities to reargue their matter on new set of facts as well as some documentation, which they would like to use in the appeal, to overcome the findings, which have been given by the learned Single Judge, which are rather loaded and explains the manner in which the State has gone about treating the claim of the private respondent. Obviously, there is something amiss in the manner in which certain authorities of the State are pursuing the issue as if there is some personal agenda they have against the hapless widow, who is without any support system or any kind of relief having been granted ever since the husband went missing in the year 1994.

7. The Court, therefore, in totality does not feel that the learned Single Judge has committed any aberration in fact or law, which is required to be interfered with and the appeal does not deserve any indulgence in absence of any explanation coming even at this stage, which has been already commented and explained by the learned Single Judge.

8. The appeal has no merit. It is dismissed. The direction issued by the learned Single Judge must be carried out in terms of the order.

9. It is also made clear that till the State authorities implement the order of the learned Single Judge in toto, they will not disturb the private respondent from the official accommodation which



she has been permitted to occupy by judicial intervention. This part of the order especially is reinforced keeping in mind the conduct of the State authorities and their attitude of non- implementation of the judicial order which was passed way back on 09.09.2011.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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