

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6596 of 2004

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Saraswati Devi wife of Brij Nandan Prasad, resident of Village Bhutahakhar
(Narottam Chak), P.O. Chistipur, Police Station Nagar Nousa, District Nalanda
(Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Patna.
2. The District Superintendent of Education, Patna.
3. The Area Education Officer, Patna Sadar.
4. The School Sub-Inspector, Golghar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sharma, Advocate

For the State : Mr. Chandra Shekhar Singh, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-02-2018

Heard learned counsel for the petitioner and State.

2. Though the writ petition has been filed in the year 2004 and has been admitted for hearing on 03.01.2005, in the presence of learned counsel for the State, still no counter affidavit having been filed is indicative of the casualness with which the authorities have acted in the present writ petition. However, the Court would deal with the issue later in the order.

3. The petitioner has moved the Court for the following reliefs:

“ That this is an application for issuance of a writ in the nature of certiorari for quashing the



order dated 31.12.2003 (Annexure-20) by which the District Superintendent of Education Patna (Respondent No. 2) has dismissed the service of the husband of the petitioner since 18.07.2003, and further to pay/give to him all the consequential benefits (As a result of the quashing of the order dated 31.12.2003 Annexure-20 passed by District Superintendent of Education, Patna).”

4. The petitioner, being wife of Brij Nandan Prasad, an Assistant Teacher who is said to have gone missing on 10.05.2002, claims retiral benefits. Prior to that, the petitioner was caught at the evaluation centre of Matric examination on 18.04.2000 without being authorized and the details of two candidates with Centre Code, Ticket Number, Roll Number was recovered from his possession. The team included the Departmental Minister and Administrator of Bihar School Examination Board. The petitioner was forwarded to judicial custody and F.I.R. instituted. Later on, the petitioner was released from custody upon grant of bail on 25.04.2000. He was placed under suspension and departmental proceeding was initiated. The allegations were that from 18.04.2000 to 25.04.2000 he was incarcerated in jail and that he had not informed the Department with regard to him having been in jail. Thus, in effect, the charge being that he was in jail from 18.04.2000 to 25.04.2000 would necessarily mean that it



included the reason for going to jail, which is reflected and clear from the F.I.R. lodged in this connection being Gardanibagh (Shashtri Nagar) P.S. Case No. 223 of 2000 dated 18/19.04.2000. The husband of the petitioner was served memo of charge under Memo No. 4918 dated 28.06.2000 and directed to submit his explanation within 15 days. It appears that he did so, though belatedly, on 19.07.2000. Thereafter, upon enquiry being conducted and report submitted on 08.11.2000, finding the charges to be proved, second show cause was issued to him under Letter No. 4324 dated 27.08.2003. The same having gone unreplied, the Establishment Committee, by the decision taken on 18.07.2003, dismissed him from service, which was communicated under the impugned Memo No. 6713 dated 31.12.2003. In the meantime, it appears that the petitioner had lodged a complaint with the local Police with regard to her husband having gone missing since 10.05.2002. The same was lodged on 07.06.2002 stating that her husband had gone for pilgrimage to Haridwar on 10.05.2002 stating that he would return on 18.05.2002 but since then, neither he had returned nor she could trace him, despite making her best efforts.

5. Learned counsel for the petitioner submitted that her husband had been detained on 18.04.2000 on misconception, as he was neither unauthorized nor had any material on him to indicate that



he had gone there to make any effort for influencing the examiners with regard to any person. Learned counsel submitted that the explanation submitted by him on 19.07.2000 would indicate that he had taken the stand of him having been authorized by the Headmaster under Letter No. 12 dated 13.04.2000 for evaluation work and, thus, had gone to the centre on 18.04.2000 and was wrongly caught on the allegation that he was present there unauthorizedly, despite him having such authorization. He further submitted that he had also given the copy of the Admit Cards which were of his son and, thus, not connected with the examination for which evaluation was going on. Learned counsel submitted that the order impugned has been passed without considering the relevant materials which had been submitted by the petitioner and deserves to be set aside. Learned counsel further submitted that the second show cause was also issued after the husband of the petitioner had already gone missing in May, 2002 itself and, thus, the proceeding stands vitiated on this ground alone.

6. Learned counsel for the State submitted that the contentions of learned counsel for the petitioner are misconceived. It was submitted that as per the authorities, the petitioner has not been able to explain to the authorities with regard to the reason he was sent to prison and, further, about his non-informing the authorities to this effect. It was further contended that the petitioner has not raised any



defence with regard to the materials recovered from his possession relating to details of two candidates and, thus, cannot take such plea before this Court when the same had to be specifically raised and pleaded in his show cause reply. It was submitted that the petitioner has not been able to show any procedural infirmities to the Court to warrant any interference.

7. At this juncture, learned counsel for the petitioner submitted that even if it is accepted that the charges are proved, it is not such a glaring case where the extreme punishment of dismissal be awarded as it would entail the entire family to the extreme and harsh consequence where even family pension would be forfeited, which is the only succor now to the widow and the children. It was submitted that the Court may take a compassionate view and direct the authorities to re-consider the ultimate order of dismissal and may modify it to some other punishment so as to protect the family pension to the petitioner. He has taken a categorical stand that she would not be praying for any consequential relief by seeking for payment of the past period and would be satisfied that the punishment may not be one of forfeiture of pension, which should be paid to her.

8. Learned counsel for the petitioner submitted that she is ready to accept the computation of retiral benefits of her late husband till 17.04.2000, i.e., a day prior when he was arrested and would also



not claim any interest on any delayed payment.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case has been made out for interference by this Court in its discretionary and equitable jurisdiction.

10. The Court also cannot lose sight of the fact that when from May, 2002 there is material to show that complaint was lodged with the local Police Station with regard to the husband of the petitioner having gone missing and the authorities also informed of such fact, the second show cause having been sent after more than a year, the authorities, strictly speaking, may probably have lost the right to pass any order, moreso, in view of the fact that in the second show cause there is no indication that copy of the enquiry report was being forwarded, as it does not have any annexure enclosed. This again is a grave lacuna in the procedure as the second show cause has to be accompanied with copy of the enquiry report which does not seem to have been complied with. Thus, the requirement of law that the material on which the disciplinary authority relies has to be communicated to the delinquent which, as stated above, has not been done and further, the same has also to be communicated to the delinquent, which also appears to be seriously doubtful, for the reason that detailed complaint was lodged and thereafter the petitioner also



having moved the media, i.e., *Doordarshan* and *Aakashwani* for getting information with regard to her missing husband, clearly indicates that such complaint was not frivolous.

11. For the reasons aforesaid, the writ petition stands allowed to the extent that the order of dismissal of the husband of the petitioner from service is set aside. Thus, he is deemed to have been in service. However, as admittedly he had been on duty only till 17.04.2000, as has been agreed by learned counsel for the petitioner, all post retiral benefits shall be confined to the period of service only till 17.04.2000. Further, as has been submitted by learned counsel for the petitioner, for payment of such dues, he shall not claim any interest, the authorities are directed to ensure that the retiral dues to the petitioner on account of her husband being in service till 17.04.2000 be calculated and paid to her expeditiously and latest within a period of three months from the date of production of a copy of this order before the respondent no. 1 (District Magistrate, Patna).

12. Coming to the issue of there being no counter affidavit filed on behalf of the State, despite the case having been admitted in the presence of the parties on 03.01.2005 and thereafter again taken up on 28.07.2011, the Court finds that such conduct is not fit to be condoned.

13. Accordingly, the Court would direct the District



Magistrate, Patna (respondent no. 1) to conduct an enquiry and fix responsibility with regard to such conduct of non-filing of counter affidavit in the present case. The recommendation of the enquiry would be forwarded to the Principal Secretary, Department of Education for taking appropriate action against the officers whom the District Magistrate holds responsible.

(Ahsanuddin Amanullah, J)

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