

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1582 of 2015

In

Miscellaneous Jurisdiction Case No.1655 of 2015

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1. The Director, Department of Agriculture, namely, Mr. Dharmendra Singh, Govt. of Bihar, Vikash Bhawan, old Secretariat, Patna, Bihar.
 2. The Agriculture Production Commissioner, namely, Mr. Vijay Prakash, Department of Agriculture, Govt. of Bihar, Vikash Bhawan, Secretariat, Patna, Bihar
 3. The State of Bihar through the Chief Secretary, namely, Anjani Kr. Singh, Govt. of Bihar, Old Secretariat, Patna, Bihar
 4. The Joint Director of Agriculture (Plant Protection) namely Prabhat Kumar, Dept. of Agriculture, Mithapur Agriculture Farm, Patna
 5. The Deputy Director of Agriculture (Plant Protection) namely Dr. Pramod Kumar, Dept. of Agriculture, Mithapur, Agriculture Farm, Patna
 6. The Deputy Director of Agriculture (Plant Protection) namely Sri Ravindra Kmar, Dept. of Agriculture, Govt. of Bihar, Krishi Bhawn, Bhagalpur
 7. The Junior Plant Protection Officer namely Sri Vinay Kumar Singh, Dept. of Agriculture, Mithapur Agriculture Farm Patna
 8. The Junior Plant Protection Officer namely Sri D.N. Paswan, Dept. of Agriculture, Sasaram (Rohtas)
 9. Sri Sita Ram Singh S/o not known to the petitioner, Head/Senior Clerk office of the Joint director, Dept. of Agriculture, Govt. of Bihar, Mithapur Agriculture, Farm, Patna

... ..Opposite parties/ Appellant/s

Versus

Kumkum Devi, daughter of Late Ram Prasad Singh, wife of Sanjay Kmar Singh, resident of Village-Jagdishpur, P.O. Poawan, P.S. Masaurahi, District Patna, presently residing at C-34, Ground Fkloor Budha Bazaar, Opposite Komal Jeevan School, Vikash Nagar, Paart-2, Uttam Nagar, West Delhi-110059

... ..Petitioner/Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Kumar, AC to AAG 14 Mr. Manoj Kumar
For the Respondent/s	:	Mr. Sanjay Kumar Verma Mr. Bijay Bihari Sinha Mr. Amrendra Kumar

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date :7-03-2018

Heard Mr. Jitendra Kumar, learned assisting counsel to



AAG-14 for the respondent-appellants and Mr. Sanjay Kumar Verma, assisted by Mr. Vijay Bihari Sinha, for the respondent-writ petitioner.

2. This appeal arises from an order passed by a learned Single Judge of this Court in MJC No. 1655 of 2015 arising out of CWJC No.1979 of 2007, whereby the learned Single Judge, taking note of the changed situation where the original writ petitioner had deceased and the proceeding yet remained inconclusive, disposed of the contempt application with direction to the Director, Agriculture, to act in accordance with law and pay the arrears of salary and the retiral dues of the writ petitioner to his daughter.

3. This appeal is filed against an interlocutory order passed on 18.08.2015, whereby such direction was issued and the matter was posted after three weeks. The records of the contempt application would confirm that the matter was again taken up on 10.09.2015 and the learned Single Judge, taking note of the present appeal as well as the submissions of the appellants-respondent of taking steps in the light of the direction so issued in the contempt application subject to the outcome of the present appeal, has been pleased to dispose of the contempt application.



4. The facts on records would confirm that the father of the petitioner posted as a clerk in the office of the District Agriculture Officer, Rohtas, was dismissed from service vide order bearing Memo No.624 dated 28.01.2002. He appealed against the order of dismissal which also was rejected by the Joint Secretary vide letter bearing No.1277 dated 29.08.2006. Feeling aggrieved, the deceased employee moved this Court in CWJC No. 1979 of 2007 and vide judgment and order passed on 12.08.2011, the writ application was allowed. We are persuaded to reproduce the relevant extract of the order allowing the writ petition which runs hereinunder:-

“I am satisfied that the authorities did not consider his show-cause reply and proceeded to dismiss the petitioner from service. In the light of my findings above, I set aside the dismissal, appellate order dated 28.1.2002, Annexure-6 and 29.8.2006, Annexure8 and remit back the matter to the Director, Agriculture with direction to consider the second show-cause reply filed by the petitioner dated 19.1.2002, Annexure-5 and to pass fresh order in accordance with law. Arrears of salary of the petitioner for the period between 28.1.2002 till the date of passing of this order shall be subject to the result of the final order passed by the Director in compliance of this order. Before passing of the order dated 28.1.2002 petitioner was under



suspension, as such, until fresh order is passed in the light of the order of the High Court petitioner shall continue under suspension and shall be entitled for grant of subsistence allowance from the date of the High Court's order till fresh order is passed in compliance of the order of the High Court.

The writ application is, accordingly disposed of.”

5. As a consequence of the quashing of the order of dismissal, the petitioner stood reinstated in service and was entitled to the admissible 'in service' benefits, as allowed in the order. On the other hand, even though liberty was granted to the respondents for passing a fresh order in accordance with law, but the liberty so granted was not exercised and the government employee deceased on 20.03.2015. It is thereafter that the daughter of the deceased employee moved this Court through the contempt application in question charging the respondents of alleged violation in not concluding the proceeding in time. It is taking note of the changed situation where the respondent failed to conclude the proceeding until the death of the government employee that the learned Single Judge passed the following order dated 18.08.2015:-

“Daughter of the writ petitioner has filed



this contempt petition asserting that in compliance of the order of the High Court dated 12.08.2011 passed in CWJC No. 1979 of 2007, respondent-authorities of the Agriculture Department has not concluded the departmental proceeding after this Court set aside the dismissal order dated 28.01.2002. Meanwhile, her father left for heavenly abode on 20.03.2015 and thereby the authorities are not required to conclude the said proceeding and pay the entire arrears of salary until the date of superannuation i.e. 30.01.2002 and pensionary dues thereafter to the petitioner, who is sole surviving heirs of her father.

This Court is conscious of the jurisdiction, yet, directs the Director, Agriculture to act in accordance with law and pay the arrears of salary and retiral dues of the writ petitioner to her daughter in accordance with law as until his death, the authorities never concluded any proceeding taken against him.

Necessary payment in this regard be made within three weeks from today.

Put up after three weeks on 09.09.2015 under the same heading.”

6. It is feeling aggrieved by the order dated 18.08.2015 that the respondents in the writ petition preferred the present appeal which, on consideration on 08.09.2015, was admitted for hearing and the order dated 18.08.2015 passed in MJC No.1655



of 2015 arising from CWJC No. 1979 of 2007, was stayed. Since further proceedings in the contempt application was not stayed that it was next taken up on 10.09.2015 when the learned Single Judge, taking note of the admission order dated 08.09.2015 passed in the present appeal, disposed of the contempt application taking note of the submission of the State respondents that they would take steps for compliance of the order dated 18.08.2015 subject to the outcome of the pending Letters Patent Appeal. The matter after admission was taken up for hearing and when we have heard Mr. Jitendra Kumar, learned assisting counsel to AAG-14 for the appellant-respondent while Mr. Sanjay Kumar Verma has appeared for the respondent-writ petitioner.

7. From the argument advanced by Mr. Jitendra Kumar, counsel for the appellants, primarily two issues have come to the fore which perhaps propelled the State respondent to prefer the appeal. Firstly, whether the learned Single Judge while exercising the contempt jurisdiction could have issued the direction as present in the order dated 18.08.2015 to grant relief to the petitioner and secondly, whether or not a direction could be given for payment of the admissible 'in service' & post-retiral dues to the substituted daughter, without making



stipulation regarding other legal heirs, if any.

8. The facts accompanying the contest is not in dispute and it is not disputed that since after quashing of the dismissal order dated 28.01.2002 and the appellate order dated 29.08.2006 and despite remand of the matter to the Director, Agriculture to pass a fresh order in accordance with law after consideration of the second show cause reply filed by the deceased government employee who was the writ petitioner before this Court, no order was passed in the disciplinary proceeding which stood revived by virtue of such quashment and the petitioner superannuated and also deceased in such state of harness on 23.03.2015. In other words, the disciplinary proceedings remained inconclusive until the death of the writ petitioner.

9. The issue is what is the legal consequences of a quashment of an order of penalty of dismissal followed by a remand of the matter to the disciplinary authority for fresh disposal in accordance with law but before the proceedings attain finality, the delinquent deceases in harness.

10. The legal position, in this regard, is well-settled and where a disciplinary proceeding remains inconclusive until the death of the delinquent it shall be held abated because obviously it cannot proceed in his absence. Same is the situation where a



final order passed in the disciplinary proceeding is quashed by a competent forum and the matter is remitted back to the disciplinary authority for proceeding afresh in the matter in accordance with law, but the liberty so granted is not exercised by the disciplinary authority until the death of the delinquent in harness.

11. The proposition so formulated is no more *res integra* and reference, in this regard, is made to the opinion expressed by the Supreme Court in similar circumstances arising in an appointment matter in a judgment reported in **(1998) 8 SCC 194 (Basudeo Tiwary vs. Sido Kanhu University & Ors.)**, more particularly to the opinion expressed in paragraphs 13 and 14 of the judgment which runs as under:-

“13. Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid.



Consequently, it would be deemed that the appellant had died in harness. Needless to say that he appellant would become entitled to the payment of arrears of salary from the date of termination of his services up to the date of his death on the basis of the last pay drawn by him. Let the respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.”

(Emphasis supplied)

12. In fact, in a somewhat similar situation as questioned before us in this appeal, fell for consideration before a Bench of this Court in the case of **Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others**, reported in **2000(4) PLJR 471**. In almost identical circumstance where the disciplinary proceeding suffered serious procedural deficiency warranting a remand for holding the proceeding afresh, the Court noticed that the delinquent had deceased in the meanwhile and thus no order could be passed for remand but at the same time, the legal representative had become entitled for the consequential benefits on the death of the employee who was treated to have died in harness. It is taking note of these special circumstance that order was issued to the respondents to make payment of



the admissible dues to the legal representative. We are persuaded to reproduce paragraphs 5 to 8 of the judgment, in the case of **Ashok Kumar Singh** (supra), which runs as under:-

“5. It is submitted by the learned Counsel for the petitioner that the impugned order of dismissal is vitiated on account of fact that the petitioner was denied of subsistence allowance during the inquiry and that the order of dismissal was passed by the authority who was himself the appellate-authority under the Regulation of the Company. In this regard, he referred to the judgment of this Court against the same Company filed by one Apurba Kumar Chanda being C.W.J.C. No. 3468 of 1995 disposed of on 17.9.1999. It has been submitted that in view of the law settled by the apex Court in the case of **State of Maharashtra v. Chandrabhan and analogous cases**, reported in **AIR 1983 SC 803**, and in the case of **Fakirbhai Fulabhai Solanki v. Presiding officer and Anr.**, reported in **AIR 1986 SC 1168**, denial of subsistence allowance during the inquiry has been held to be amounting to violation of the principles of natural justice and consequently vitiates the whole proceedings. He also submitted that this Court in the case of **Rama Kant Sharma v. The Patliputra Central Cooperative Bank and Ors.** relying upon the decision of the apex Court in the case of **Surjit Ghosh v. Chairman and Managing Director United Commercial Bank**



and Ors., reported in **(1995) 2 SCC 474**, held that where there is provision of appeal against the order of disciplinary authority and the appellate or higher authority against whose order there is no appeal, exercise the power, such order shall vitiate. In view of the settled law, learned Counsel for the Respondents has not been able to defend the order of punishment.

Writ petition is, thus, allowed. The impugned order contained in Annexure-33 is quashed.

6. However, a question arose as to for what relief the petitioner is entitled in the peculiar facts and circumstances of the case. It was submitted by the learned Counsel for the Respondent-Company that since the order of punishment has been quashed on technical ground in view of the settled principle such matter are normally remitted back for fresh consideration, but in the present case since the delinquent employee is dead the question of remitting the matter back to the competent authority may not be possible, but at the same time the order having been quashed on technical ground, substituted petitioner cannot be granted any relief. This Court is unable to accept the said submission of the learned Counsel for the Company.

7. In this regard, learned Counsel for the petitioner has relied on the decision of this Court in the case of **Sumitra Devi v. Union of India**, reported in **1987 PLJR 714**, wherein under more or



less similar circumstances, this Court quashed the order removing the original petitioner from service as being devoid and inoperative in law and further directed the Railway to pay to the legal representatives all salaries due to the employee concerned as if he continued in service till the date of his death and directed to pay them also oilier benefits admissible to the employee concerned including pension, etc. It has been submitted by the learned Counsel for the petitioner that after the order of punishment goes and in the peculiar facts and circumstances, the matter cannot be remitted back to the disciplinary authority, the position as it stood before the order of punishment was passed stood restored and consequently, the heirs and legal representative of the deceased employee will be entitled for all the benefits.

8. This Court finds substance in the said submission of the learned Counsel for the petitioner. Having regard to the fact that the order of punishment against the deceased employee does not exist and after his death no fresh inquiry can be held and order can be passed the position will stand revived as it stood before the order of punishment was passed. As such, this Court does not find any justification to deny the consequential benefit which view also stands supported by the aforementioned decision of this Court in the case of **Sumitra Devi v. Union of India.**”



13. Such a situation also arose in a matter which fell for consideration before a Division Bench of this Court in case of **Union of India vs. Shri Gupteshwar Mishra**, reported in **2015 (3) BBCJ V-156**. The Division Bench, taking note of the procedural flaw in the proceeding and noticing the perversity in the final order passed, was satisfied that the matter required a remand but such order could not be passed since the delinquent was dead. The Division Bench taking note of the circumstances/situation, held the proceeding abated which obviously could not proceed in absence of the delinquent. The opinion expressed in paragraphs 5 and 6 of the judgment would be a guidance to the issue in contest herein and is reproduced hereunder:-

“5. Having considered the matter, in our view, the order of the Tribunal holding that there was serious flaw in the proceedings by non-examination of the Accountant General and the Deputy Accountant General cannot be said to be bad or perverse in any manner. However, even if we set aside the order of the Tribunal that would have necessitated remanding the matter to the Tribunal for fresh consideration or fresh enquiry which obviously cannot be done as the employee is dead. In our view, this writ petition would abate as has been held by the Apex Court in the case of



Basudeo Tiwary Vs. Sidho Kanhu University and others since reported in **(1998) 8 Supreme Court Cases 194**. As held in that case, it would be deemed that the employee died in harness. We also supported by a decision of this Court in the case of **Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others** since reported in **2000(4) PLJR 471**. there is yet another decision of this Court in the case of **Mohal Lall Vs. the State of Bihar** being **C.W.J.C. No. 9636 of 2008** disposed of on 08.08.2013 wherein again it was held that the employee would be deemed to have died in harness in such a situation.

6. Accordingly, we hold that this writ petition abates and the consequence being that the order of the Tribunal being for reinstatement of the employee, he would be deemed to have died in harness and necessary consequence would automatically flow with regard to death-cum-retiral dues and payment of salary etc.”

14. In our opinion, there was two course open for the learned Single Judge on taking note of the issue raised in the contempt application, namely, (a) either to proceed against the respondents for violation of the order passed on the writ petition in not passing the final order in the disciplinary proceeding, and/or (b) to do substantial justice on the facts present in the



contempt application. In our opinion, it is with the view to do substantial justice that the learned Single Judge instead of holding the respondents in contempt of its order, rather chose to pass order of payment of admissible claims to the petitioner which direction suffered no infirmity, save and except that the recipient of such admissible benefits could have been given a broader expression rather than limiting it to the petitioner in the contempt application.

15. As to whether or not the learned Single Judge could have issued such direction in exercise of contempt jurisdiction, the matter again is no more *res integra* and reference is made to a Division Bench judgment of this Court reported in **1993 (1) PLJR 437 (Ram Vilash Mishra vs. State of Bihar)**, more particularly the opinion expressed in paragraph 19 to 22 of the judgment which reads as under:-

“19. It is true that jurisdiction of this Court in terms of the provisions of the Contempt of Court’s Act, 1971 is to find out as to whether there had been a willful violation of this Court’s order by the contemner opposite party or not. But, in my opinion, in a given situation, this court is not precluded in passing an appropriate order in the interest of justice.

20. In **R.M. Ramani vs. The State of Himchal Pradesh & Ors.** reported in **AIR 1991**



SC 1171, the Supreme Court held that technically there may be no case for punishment for contempt, but it observed:

“if a specific direction is necessary, we issue it here and now.”

The Supreme Court in that case, thereafter, gave direction making it clear that the petitioner of that case was entitled to monetary benefits consequent upon his promotion to be given on a notional basis.

21. From the decision of the Supreme Court in **Ramani’s case** aforementioned, it is clear that in a given case, the Court may issue appropriate direction if it becomes necessary in the interest of justice.

22. The Supreme Court in **Sita Ram Sahu vs. Smt. Lalpari Devi and others** reported in 1991 (2) PLJR 44 (SC) was considering a case where an eviction order was stayed by the Supreme Court, but allegedly the respondent demolished the premises. In that case, the demolition was sought to be justified by the contemner-opposite parties on the basis of an alleged direction to the effect by the Darbhanga Regional Development Authority. It was observed:-

“We take a lenient view of the matter, but not without directions. We direct that the respondents shall reconstruct the portion of the building which is to be given to the petitioner within six months from today and he shall be



reinducted into the premises immediately thereafter. The petitioner shall be reinducted as a tenant not for three years as stated by Panchayat but just like any other tenant without term as to period. The petitioner shall not be asked to pay enhanced rent or prevailing rent for the new premises but the old rent only. The petitioner will be at liberty to mention if there is any difficulty.”

It is, therefore, evident that in that case also, the Supreme Court had issued directions in the interest of justice although it did not punish the contemner-opposite party.”

16. As in the present case, the Division Bench in consideration of the contempt arising in the case of **Ram Vilash Mishra** (Supra) after taking note of the opinion of the Supreme Court on such issue, issued direction to the contemnors for finalization of the pension case of the petitioner of the said case.

17. The discussion above would confirm that neither the direction of the learned Single Judge put to question before this Court suffers from any infirmity on merit in view of subsequent development that had taken place since after passing of the order on the writ petition nor there was any error in exercise of the jurisdiction by the learned Single Judge in issuing direction to the respondents for payment of the dues found admissible to the deceased government servant, on a



contempt petition.

18. We, however, are persuaded to take note of the argument of Mr. Jitendra Kumar, learned State Counsel that such direction for payment of admissible dues has to be extended to all the legal heirs of the deceased government servant and not to the petitioner in the contempt application alone and we accept thus.

19. Having considered the special nature of contest and not being satisfied by the issues raised by the appellant-respondents in the present appeal, we hereby dismiss the appeal with a slight modification in the direction issued by the learned Single Judge in his order dated 18.08.2015 passed in MJC No. 1655 of 2015 to the extent that the Director, Agriculture would determine, calculate and ensure payment of 'in service' benefits viz. the arrears of salary etc. together with admissible retiral dues of the writ petitioner (since deceased)/family pension etc., to his legal heirs in accordance with law which exercise be completed within a period of three months of the date of receipt/production of a copy of this judgment.

20. The order passed by the learned Single Judge put to appeal herein stands modified to the extent above and with such observation the appeal is dismissed.



21. There shall be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
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