

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2767 of 2011

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Ishwar Chandra Sharma, S/O Sri Krishan Sharma, Permanent resident of Village -
Ahaladpur , P.O - Haridaspur , P.S. Kanti , District - Muzafarpur. Petitioner
Versus

1. The State of Bihar
 2. The Secretary, Department of Water Resources, Government of Bihar, Patna.
 3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
 4. The Chairman, Bihar State Construction Corporation Ltd., Patna.
 5. The Managing Director, Bihar State Construction Corporation Ltd., Anisabad,
Patna.
 6. The Financial Advisor, Bihar State Construction Corporation Ltd., Anisabad,
Patna.
 7. Accounts Officer, Bihar State Construction Corporation Ltd., Anisabad, Patna.
..... Respondents
- =====

Appearance:

For the Petitioner/s : Mr. Sudhir Kumar Upadhyay and
Mr. Sanjay Kumar, Advocates.

For the Respondents-State: Mr. Akhileshwar Singh, AC to GA 2.

For the Corporation: Mr. Harshvardhan Shivsundaram, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 05-01-2018

Heard learned counsel for the parties.

2. Initially when the Writ Application was preferred the petitioner prayed for payment of arrears of salary which, according to him, has accumulated to the extent of Rs. 14,99,950/-. The grievance of the petitioner was that though he was rendering his services to the Bihar State Construction Corporation Limited (hereinafter referred to as 'the Corporation'), which is a government company as 100% share of the company is held by the Government of Bihar, he was not being paid his salary and emoluments attached to the post.



3. What has emerged out from the pleadings exchanged by the parties is that the Corporation is suffering from acute financial crisis and, in fact, is unable to pay the salary due to its employees.

4. At this stage, learned counsel for the petitioner submits that in similar circumstance, in the case of **Bihar State Ardh Sarkari Arajpati Karamchari Maha Sangh Vs. The State of Bihar & Ors. (CWJC No. 21893 of 2011)**, a co-ordinate bench of this Court having taken note of the plights of the employees of the Corporation including the Bihar State Construction Corporation Limited (respondent no. 4 in the said case) issued the following directions:-

“(i) The Finance Department would allocate at first instance a sum of Rs.10 Crores separately for payment to the affected employees on the recommendation of the Managing Director/Administrator of the Corporation, as the case may be. This amount would be supplemented as occasion arises.

(ii) On receipt of application from the employees claiming to be the affected person, the concerned Managing Director/Administrator would examine the individual cases and may decide to make recommendations accordingly depending on the merit of the case for release of fund in his/her favour.

(iii) On receipt of such recommendations, the Finance Department would make necessary allocation of fund to the concerned Managing Director/Administrator of the



Corporation for its disbursement to the affected employees.

(iv) The whole exercise must be completed within three months from the date of receipt of application from the employees.”

5. Learned counsel submits that earlier when a contempt application was filed by one of the employees, namely, Md. Hamid Ali vide MJC No. 1676/2016, the Court was given to understand that the cabinet had sanctioned rupees one crore thirty four lakhs and odd to the Corporation for making payment to the petitioner in the said case and other similarly situated persons in whose favour there is Court's order. It was informed that only some procedural formalities are to be completed and thereafter money shall be disbursed to the petitioner in the said case.

6. The petitioner has seriously contended before this Court that while some of the employees of the Corporation have been paid taking care of their bad conditions and particularly where some of them were able to demonstrate that their family is on the verge of vagaries and they have got some medical issues in relation to their family members but all such payments are made only either on the direction of the Court or on pick and choose basis. The petitioner has specifically stated in Paragraphs 12 and 13 of the Writ Application as



under:-

“12. That it is stated that since the petitioner is regularly discharging his duties and now has come on the verge of retirement and petitioner will retire on 30.09.2015 and since the petitioner was/is in the dire need of money since the wife of the petitioner is suffering from Cancer and is being treated at Tata Memorial Hospital, Mumbai and is required to go regularly for her treatment, which is very costly affair and petitioner is now unable to meet the expenses incurred in the treatment of his wife Smt. Neelam Sharma and accordingly, petitioner submitted his representation before the Managing Director, Bihar State Construction Corporation Limited, Patna on 13.12.2010 but till today no such payment has been made.”

“13. That thus, from the aforesaid facts, it becomes evident that on account of non-payment of salary, petitioner is unable to meet two meals for himself and his family members and the dependant children nor petitioner is able to provide proper treatment to his wife, who is suffering from Cancer, as such petitioner is entitled for interest at the rate of 12 per cent per annum over the entire due amount, so that petitioner can be compensated also because of the fact that the petitioner after taking loan from various persons is getting his wife treated which loans have been obtained on interest.”

7. Learned counsel for the Corporation and its authorities



submits that financial crisis in the Corporation still persists and, in fact, steps have been taken for winding up of the Corporation by filing an appropriate application before the learned National Company Law Tribunal at Kolkatta under the provision of the Insolvency and Bankruptcy Act, 2016. He would further submit that although the cabinet had sanctioned rupees one crore thirty four lakhs, as has been taken note of in the order dated 10.08.2016 passed in MJC No. 1676 of 2016, but the fact remains that the said amount has not been released in favour of the Corporation for one reason or another. He does not dispute the factual position as pleaded by the petitioner in his Writ Application showing his bad conditions and the need for treatment of his wife who is suffering from cancer.

8. Learned counsel also accepts that some of the employees, who were found in need of money for various reasons including to meet the expenses of treatment of their family members, have been paid some amounts by making necessary arrangement of fund from different sources including by taking loan from the State of Bihar. It is also pointed out that the judgment of the co-ordinate bench of this Court in the case of **Bihar State Ardh Sarkari Arajpati Karamchari Maha Sangh** (Supra) has been also affirmed by the Division Bench of this court in LPA No. 1940 of 2015 and LPA No. 88 of 2016. LPA No. 88 of 2016 was preferred by the State of Bihar



& Ors. against the order of the learned single Judge of this Court passed in CWJC No. 21893 of 2011 which has been dismissed by the Division Bench.

9. Having considered the submissions of the learned counsel for the parties as also on perusal of the records, I am of the considered opinion that there is already a direction to the Finance Department of the Govt. of Bihar to allocate a sum of rupees 10 crores separately for payment to the affected employees on the recommendations of the Managing Director / Administrator of the Corporation. Directions have already been issued that on receipt of the applications from the employees claiming to be the affected persons, the concerned Managing Director would examine the individual cases and may decide to make recommendations accordingly depending on the merits of the case for releasing of fund in his/her favour. It is further incumbent upon the Finance Department to make necessary allocation of funds to the Managing Director of the Corporation for its disbursement to the affected employees.

10. On the face of the directions already issued by this Court in CWJC No. 21893 of 2011, the Managing Director, Bihar State Construction Corporation Limited is under obligation to consider the request and representation of the petitioner and upon proper consideration he is liable to decide the same and make



recommendations accordingly considering the merits of the case of the affected persons and the petitioner as well. Since the petitioner has specifically stated that his wife is suffering from cancer and due to non-payment of salary for so many years despite rendering his duties in the Corporation he is on the verge of vagaries and unable to find out two times' meal for his family, it is expected that the Managing Director of the Corporation shall show some sensitiveness towards the issue taking into consideration the human rights aspect as well. He will pass necessary orders on the request and representation of the petitioner, if already pending with him or in case the petitioner submits a fresh representation pursuant to this order, within a period of thirty days from the date of receipt or production of a copy of this order.

11. The Finance Department, Govt. of Bihar shall be under obligation to make necessary arrangement of funds if not already made based on the recommendations of the Managing Director of the Corporation and the same shall be made available to the Managing Director of the Corporation within a period of thirty days from the date of receipt of the recommendations. Thereafter, the Managing Director of the Corporation shall make payment to the petitioner within one week from the date of receipt of the amount from the Finance Department.



12. It is also directed that if funds are available at the disposal of the Managing Director of the Corporation, instead of waiting for receipt of further funds from the Finance Department and against the recommendation which may be made in the case of this petitioner, he shall release the amount in favour of the petitioner within the stipulated period.

13. In fact, in the nature of the prayer made in the Writ Application in the facts and circumstances revealed, sitting in its writ jurisdiction under Article 226 of the Constitution of India, this Court is inclined to direct the Managing Director of the Corporation to remind him of the Bihar Litigation Policy framed by the Govt. of Bihar and consider the cases of all such employees, who are similarly situated, as there have been enough directions from this Court in this regard and he should not wait for an order of the Court for each and every employee compelling each & every similarly situated employee of the Corporation to bring an order of this Court to consider his/their representations would be a sheer harassment to those who are already suffering from acute financial crisis.

14. So far as the claim of the petitioner against the salary and his other dues are concerned, he will be at liberty to pursue his remedy in this regard in accordance with law.

15. It is made clear that strict compliance of the directions



given as aforesaid should be adhered to otherwise it will be viewed seriously by this Court.

16. This application is disposed of with the directions and observations here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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