

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16040 of 2014

Vijay Shankar son of Late Gokhul Mochi, Resident of Fatehpur House, Magadh Vihar, Gardanibag, P.O. Anishabad, P.S. Gardanibag, District- Patna, the retired Section Officer, Water Resources Department, Government of Bihar, Patna

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Under Secretary, General Administration Department, Government of Bihar, Patna
4. The Departmental Promotion Committee/Screening Committee, General Administration Department, Government of Bihar, Patna
5. The Principal Secretary, Water Resources Department, Government of Bihar, Patna

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ravi Ranjan
For the Respondent/s : Mr. Vikash Kumar

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 28-01-2019 Claim for grant of benefits of second ACP is made in the writ petition. During pendency of these proceedings the petitioner has succumbed to the terminal diseases on 1.8.2017. I.A. No. 6982 of 2017 has been filed for substituting the name of petitioner's wife in place of the petitioner. Details of the petitioner's wife is mentioned in para 7 of the I.A.

Let the name of the petitioner's wife as detailed in para 7 of the I.A. be substituted in place of the petitioner.

. Heard learned Counsel for the petitioner and the learned Counsel for the respondent State on the merits of the



matter.

The petitioner's claim for grant of benefits of second ACP on completing 24 years from 28.10.1980 i.e. with effect from 28.10.2004 has been rejected by the impugned order dated 31.7.2014. The claim was considered pursuant to the order passed on the petitioner's earlier writ petition bearing CWJC No. 21984 of 2012. The claim has been rejected on the ground that since prosecution was sanctioned against the petitioner on 24.4.2000 in the proceedings arising out of Vigilance Case No. 9 of 1997 the petitioner's claim is not worthy of consideration.

The rejection therefore is not sustainable in law. The law is well settled. The Apex Court in the case of *Union of India & ors. Vs. K.V.Jankirakman & ors.* reported in (1991) 4 SCC 109, has clearly held that the date of initiation of the departmental proceeding is from the date of submission of the charge memo in a departmental Enquiry and from the date of submission of charge sheet in a criminal trial.

Admittedly the charge sheet in the instant case was submitted on 24.12.2004. The entitlement of grant of benefits under ACP, as is evident from the impugned order itself, is with effect from 28.10.2004 i.e. prior to submission of charge sheet in the vigilance case. The authority issuing the impugned order



is conscious of the fact that pendency of the criminal proceeding can be held against the petitioner only from the date on which charge sheet is submitted in the same. This aspect of the matter has been noticed with reference to the resolution No. 1607 dated 25.3.2008 issued by the Personnel and Administrative Reforms Department of the State itself. The aspect has been considered in para 4 of the impugned order. Ignoring the law in this regard, as noted hereinabove in the case of *K.V.Jankiraman (supra)* and also ignoring the government resolution dated 25.3.2008 taken note of in the impugned office order, the authority has rejected the claim of the petitioner's husband for grant of benefits of second ACP by assigning a legally unsustainable reason that sanction had been accorded for prosecution on 24.4.2000.

The same reason has been assigned in the counter affidavit in the instant proceeding also.

Since the petitioner's husband cannot be denied the benefits merely because prosecution had been sanctioned, this Court would observe that his claim was to be considered for grant of benefits under the second ACP without raising the issue of grant of sanction in the Vigilance Case No. 9 of 1997. If there is no other impediment against grant of said benefit, the respondents should grant benefit of second ACP to the



petitioner's husband ignoring the fact of grant of sanction for prosecution on 24.4.200 in light of the law laid down in the case of *K.V.Jankiraman (supra)* as also their own departmental resolution dated 25.3.2008.

Let entire exercise be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed. The impugned order dated 31.7.2014 stands quashed.

(Madhuresh Prasad, J.)

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