

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CIVIL WRIT JURISDICTION CASE No. 11983 of 2019**

Most. Archana Sinha Wife of Late Sanjay Kumar Sinha Resident of K-117,
Hanuman Nagar, East of Housing Board, P.O. and P.S.- Patrakar Nagar,
District- Patna- 800020. Petitioner

Versus

1. The State of Bihar through the Commissioner Cum Secretary, Animal Husbandry Department and Fisheries, Government of Bihar, Patna.
2. The Commissioner Cum Secretary Animal Husbandry Department and Fisheries, Government of Bihar, Patna.
3. The Accountant General Government of Bihar, Patna.
4. The Joint Director Provident Fund Directorate, Government of Bihar, Patna.
5. The Director Animal Husbandry Department, Government of Bihar, Patna.
6. The Regional Joint Director Animal Husbandry Department, Government of Bihar, Patna.
7. The District Animal Husbandry Officer Masauri, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Apurva Harsh, Advocate
Mr. Manu Tripurari, Advocate
For the Opposite Party/s : Mr. AC to AAG 12

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Dated 22.06.2020

The present writ application has been preferred by the widow of the deceased employee. Prayer is to issue a writ in the nature of Mandamus directing the respondents to pay the Family Pension, Gratuity, Group Insurance and unutilized leave encashment of 300 days as per the Rules.

The petitioner has further prayed for a direction to pay



the salary arrears. Relief has also been prayed for a direction to the respondents to make the payment of Group Insurance and Provident Fund amount to the petitioner with the accrued interest thereon till date and a direction to pay the compensation amount of Rs. 11 lakhs as has been directed to be paid to the petitioner by the State Human Rights Commission vide order dated 05.11.2018 passed in Case No. 6703 /2017.

Facts of the Case

The admitted fact of the case is that the husband of the petitioner was appointed as Technical Assistant in the Animal Husbandry Department, Government of Bihar. He had joined the service on 04.02.1988 but according to the petitioner her husband was removed from service on 29.01.2016 after 28 years of regular service along with 14 other employees on the ground that they were not validly appointed by the then Regional Director, Animal Husbandry, Ranchi. It is a matter of record that the matter relating to termination was challenged by filing writ applications before the Hon'ble Court. The divergent view expressed by the two Hon'ble Division Benches of this Court led to a reference to the Full Bench whereafter the Hon'ble Full Bench of this Court presided over by the then Hon'ble Chief Justice went into the issue and ultimately held that the appointment of the petitioners were



totally illegal and arbitrary. The arguments made on behalf of the petitioners in those cases that their cases would be covered by the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Uma Devi (3) [(2006) 4 SCC 1]** and **State of Karnataka & Ors. Vs. M. L. Keshari [(2010) 9 SCC 247]** was also rejected and the Hon'ble Full Bench specifically held that those judgments cannot be pressed into service to regularize totally illegal service of the writ petitioners.

Learned counsel for the petitioner has submitted before this Court that although the departmental Secretary had recommended for the termination of all those persons who had contested the case of termination before the Patna High Court and the Hon'ble Supreme Court and had lost their cases but in the said list the name of the husband of the petitioner was not mentioned despite that he was terminated vide order dated 29.01.2016. The order of termination is said to be under challenge in C.W.J.C. No. 5346 of 2016 before this Court which is still sub-judice.

It is submitted that the husband of the petitioner had also approached the State Human Rights Commission complaining against the act of the respondents in depriving him from his right to work, right to livelihood and right to public



assistance giving rise to SHRC Case No. 6703 of 2017. The Hon'ble State Human Rights Commission vide its order dated 05.11.2018 passed in Case no. 6703 of 2017 held that the petitioner's husband is entitled to a compensation of Rs. 11 lakhs for violation of his human rights and in order to enable him to sustain himself and his family the respondents were directed to give payment of compensation of Rs. 11 lakhs within two months. The grievance of the petitioner is that this amount has also not been paid.

The husband of the petitioner attained the age of superannuation on 31.01.2018 and ultimately died due to various ailment on 15.01.2019. Learned counsel for the petitioner submits that even though the husband of the petitioner has been terminated from service but he cannot be deprived of the benefit of gratuity, leave encashment amount and arrear of salary. Since during the pendency of the writ application the respondents have made payment of the admitted dues of GPF and group insurance amount of Rs. 3,61,843/- and Rs. 1,16,273/- respectively, the submission of learned counsel has centered around the payment of gratuity, unutilized leave, arrear of salary and family pension.

It is submitted that on a bare reading of Section 4 of



the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act of 1972') read with sub-section (6) of Section 4 and the judgments of the Hon'ble Supreme Court in the case of **Jaswant Singh Gill Vs. Bharat Coking Coal Limited reported in (2007)1 SCC 663** and **Union Bank of India & Ors. Vs. C.G. Ajay Babu reported in (2018) 9 SCC 529** would make it clear that forfeiture of gratuity is not automatic on dismissal from service but it is subject to sub-section (5) and (6) of Section 4 of the Act of 1972.

A counter affidavit has been filed on behalf on behalf of the respondents no. 2, 5 and 6. Learned counsel for the respondents has submitted that the admitted dues on account of GPF and Group Insurance of the terminated employee stands paid and in this connection specific statements have been made in the counter affidavit which has remained uncontroverted. It is further submitted that the deceased husband of the petitioner was one of the petitioners in C.W.J.C. No.9670 of 1998 which was disposed of by the Hon'ble Full Bench vide judgment dated 10.11.2014. He had also challenged the order as contained in Memo No. 5530 dated 23.10.2018 issued by the Additional Secretary of the Government, Department of Animal Husbandry and Fishery, Bihar Patna by which the order of dismissal/removal of all illegally



appointed employees was passed. It is submitted that the judgment of the Hon'ble Full Bench was challenged before the Hon'ble Apex Court vide SLP (C) 36189 of 2014 (Md. Nasimuddin & Ors. Vs. State of Bihar & Ors.) and other analogous cases. All those SLPs were dismissed by the Hon'ble Apex Court vide order dated 02.03.2015, 01.04.2015 and 21.08.2015.

It is further submitted that so far as the direction of the Hon'ble State Human Rights Commission to pay Rs. 11 lakhs as compensation is concerned, necessary steps are being taken to challenge the same by filing a writ application in this Court. ‘

It is, thus, submitted that in the given facts, the reliefs prayed by the petitioner are not fit to be allowed.

Consideration

Having heard learned counsel for the petitioner and learned counsel for the State as also on going through the materials available on the record, this Court finds that the uncontroverted case which emerged from the pleadings on record is that in several writ petitions the order of termination was challenged. The entire batch of writ petitions were ultimately dismissed. According to the petitioner, her husband had filed C.W.J.C. No. 5346 of 2016 which is pending in this Court but on verification from the High Court's website case status it appears that the husband of this petitioner was one of the petitioners in the writ. On 11.11.2019 the



said writ application was permitted to be withdrawn with liberty to prefer departmental appeal.

The judgment of the Hon'ble Full Bench passed in the batch of writ applications leading case being Sri Shashibhushan Kumar vs. The State of Bihar and Ors. (C.W.J.C. No. 12904 of 1996) has been brought on record. A specific statement in the counter affidavit that her husband was one of the petitioners in C.W.J.C. No. 9670 of 1998 (Dilip Kumar & Ors. Vs. The State of Bihar & Ors.) decided on 10.11.2014 has not been controverted by the petitioner.

Be that as it may, even if it is the case of the petitioner that the list sent by the Secretary of the Department recommending the termination of all those persons who had contested the case of termination did not contain the name of the petitioner's husband or his writ petition number, it would not make much difference. Further submission of the petitioner that her husband has challenged his termination in C.W.J.C. No. 5346 of 2016 which is still sub-judice before this Court is not correct at this stage because on 11.11.2019 said writ application stands disposed of. As on today the fact remains that the service of the husband of the petitioner was terminated on finding that his appointment itself was illegal and the same was done on extraneous consideration in utter disregard of the principle of equality contain in Articles 14 and 16 of the Constitution of India. The Hon'ble Full Bench has



returned a finding that the appointments were illegal and arbitrary, therefore, the least which the State Government could do is to get rid of such employee appointed on extraneous consideration. In such circumstance where the appointment has been cancelled and termination of service has taken place because of the same being wholly illegal violating the mandates of Articles 14 and 16 of the Constitution of India and the appointment at the initial stage itself was bad in law a question arises as to what right exists in law to an employee. In the case of **Upen Chandra Gogoi Vs. The State of Assam & Ors.** reported in **AIR 1998 SC 1289** the Hon'ble Apex Court has in fact held that a right in law exists only and only when it has a lawful origin. In the case of **State of Orissa and Anr. Vs. Mamta Mohanti** reported in **(2011) 3 SCC 436** upon holding that the appointments were made by calling the names from employment exchange alone would not be inconsonance with the equality clause as contained in Articles 14 and 16 of the Constitution of India and when no person can be appointed even on a temporary or Adhoc basis without inviting applications from all eligible candidates the Hon'le Apex Court held ".....
therefore, it is settled legal proposition that no person can be appointed even on a temporary or Adhoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the



Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprive the candidates who are eligible for the post from being considered. A person employed in violation of these provisions is not entitled to any relief including salary.....” (emphasis supplied)

The Hon’ble Supreme Court in the case of **Pramod Kumar Vs. Uttar Pradesh Secondary Education Service Commission and others** reported in **AIR 2008 SC 1817** while examining these issues as to whether a person who lacks eligibility can be appointed and whether such irregularity or illegality can be cured/condoned, after considering the provisions of the relevant Rules came to a conclusion that the lack of eligibility as per Rules and Advertisement cannot be cured at any stage and appointment of such a person is an illegality not an irregularity, this cannot be cured. Thus, the Hon’ble Apex Court held that a person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through Court.

In the context of the appointment there being categorical finding of the Hon’ble Full Bench of this Court that the appointments were wholly illegal and had been made in violation



of Articles 14 and 16 of the Constitution of India and the impugned action was taken in order to get rid of such appointments which were made on extraneous consideration, this Court is of the considered opinion that the husband of the petitioner would not be entitled to claim gratuity, leave encashment and arrear of salary.

The question of family pension, thus, does not arise. Since the order of the SHRC has been sought to be challenged, this Court would refrain from going into that in the present writ petition. Although learned counsel for the petitioner has relied upon the judgments rendered by the Hon'ble Apex Court in the case of **Jaswant Singh Gill** (Supra) and **Union Bank of India** (supra) but having gone through those judgments, this Court finds that in those cases the Hon'ble Apex Court was dealing with the cases in which the employees were dismissed after conducting a disciplinary proceeding for the alleged misconduct. In that context, the Hon'ble Apex Court interpreted Section 4(6) (a) and (b) of the Act of 1972 and held that under sub-Section 6(a) the gratuity can be forfeited only to the extent of damage or loss caused to the employer whereas under sub-section 6 (b) the forfeiture of gratuity either wholly or partially is permissible under two situations (i) in case the termination of 14 an employee is on account of riotous or disorderly conduct or any other act



of violence on his part , (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in course of his employment.

Again in the opinion of this Court, the judgments cited on behalf of the petitioner would not be applicable in the facts of the present case where the termination of service has taken place by holding that the appointment itself was in violation of Articles 14 and 16 of the Constitution of India and it was made for extraneous consideration.

This writ application has thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR
Date of CAV 16.06.2020
Date of Uploading 22.06.2020
Date of Transmission

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

