

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18376 of 2009

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Triloki Nath Sah S/O Late Chutaru Sah, Block Extention Educator, R/O Vill.-
Khirmi Bazar, P.O- Madarghat, Kaswa, Distt.- Purnea

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Directorate Of Health Services Through Its Secretary Bihar, Patna
3. Director-In-Chief Health Services, Bihar, Patna
4. Civil Surgeon-Cum-Chief Medical Officer Purnea
5. Regional Deputy Director Health Services, Purnea Division, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Sinha, Advocate Mr. Md. Fazle Karim, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Ms. Deepika Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 27-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

“1. That the present petition is being filed for issuance of an appropriate writ for quashing the order dated 20.09.2007 as contained in clause (2) passed by the respondent no. 2, vide letter No. 1117(4) (Annexure-1) and as an consequence for the direction to the respondent authorities for making of the payment of salaries to the petitioner for the period in between his dismissal and restatement (i.e. from 11.10.01 to 27.09.07) as directed by the order dated 26.06.06, passed in L.P.A. No. 946 of 2006, which interest. And also for any other



relief or reliefs for which the petitioner is found entitled to.”

3. The petitioner was appointed as a Family Welfare Worker in the respondent-department on 27.03.1980. His services were terminated on 11.10.2004 on the alleged allegations that in the process of appointment there were certain irregularities. Feeling aggrieved and dissatisfied with the order of termination dated 11.10.2004 petitioner filed C.W.J.C. No. 14940 of 2004. Identical matters were stated to be pending before the L.P.A. Bench. Therefore, petitioner's petition was clubbed with L.P.A. No. 946 of 2003. Both C.W.J.C. and L.P.A. were decided on 26.06.2006 and directed the concerned official respondents to reconsider the grievance of the petitioner and others. In this regard, competent authority constituted a Five Men Committee. The committee stated to have submitted a report while categorizing three issues. One of the category is relating to 91 persons including the petitioner in which the finding of the Five Men Committee is to the extent that petitioner and 90 persons were stated to be appointed. Their initial appointment were irregular.

4. In the light of these facts and circumstances, the competent authority has taken a decision to regularize the



services of the petitioner and others. To that effect, an order was notified on 20th September, 2007. In the regularization order the official respondents imposed a condition that among petitioner and others are not entitled to salary for the intervening period from the date of termination till order dated 20th September, 2007 in relates to reinstatement.

5. The petitioner feeling aggrieved and dissatisfied with the condition imposed in the order of reinstatement dated 20th September, 2007, presented this petition.

6. Learned counsel for petitioner submitted that submission of Five Men Committee report and consequential order is only an eye-wash for the reasons that as to what is the actual irregularities in the process of selection and appointment was not made known by the Five Men Committee in their report so also condition in the consequential order on 20th September, 2007. In the absence of supporting reasons that there were irregularities in appointment, decision of the authorities in respect of petitioner's appointment was not in accordance with relevant provision of law or to state that his initial appointment was irregular. In other words, authority's decision is only conclusive and not supported by the material information to what extent appointment was irregular.



7. Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that 20th September, 2007 reinstatement of the petitioner and others with a rider that they are not entitled for salary during the intervening period from the date of termination till reinstatement is in order as their initial appointment was irregular and the same has been regularized w.e.f. 20th September, 2007. It is further submitted that one Malti Kumari who falls under 91 persons category filed a petition before this Court, namely, C.W.J.C. No. 2842 of 2012 and it was decided against her on 15.04.2013 while denying the salary on the principle of *no work no pay*. In the light of decision rendered in Malti Kumari case, petitioner is not entitled.

8. Heard learned counsels for respective parties.

9. Crux of the matter in the present petition is whether petitioner is entitled to arrears of salary from the date of termination till reinstatement or not?

10. Undisputed facts are that petitioner was appointed as Family Welfare Worker on 27.03.1980. After more than two decades official respondents rack up the issue of initial appointment of the petitioner and alleged to have found that there were certain irregularities. In the result, petitioner's



services were terminated on 11.10.2004 among others which was the subject-matter before this Court in C.W.J.C. No. 14940 of 2004 read with L.P.A. No. 946 of 2003 decided on 26.06.2006. In terms of the order dated 26.06.2006, official respondents constituted a Five Men Committee in order to find out whether irregularities have been committed or not? To that effect, a report was submitted to the competent authority. The competent authority after due examination of the Committee report reinstated the petitioner and others on 20th September, 2007. In the light of these facts and circumstances, petitioner is entitled to salary.

11. Learned counsel for respondent submitted that it is the case of no work no pay and further submitted that the matter is covered by **Malti Kumari Vs. State of Bihar** decided on 15.04.2013 cited (Supra). The principle of 'no work no pay' is not attracted in the present case for the reasons that official respondents have prevented in discharging duties to the petitioner during the period from 11.10.2004 to 20th September, 2007. That apart, it is to be noted that initial appointment was dated 27.03.1980 whereas the issue relating to alleged irregularities in appointment was raked up in the month of October, 2004 and services were terminated on 11.10.2004.



This Court has directed the authorities to examine each of the case as to whether is there any irregularities or not? The Five Men Committee does not specify that as to what is the irregularities in respect of appointment of the petitioner. In this regard, even the order dated 20th September, 2007 is silent. In other words, except stating that initial appointment of the petitioner was irregular and it was not supported by material information to the extent what is the irregularities committed by the officials or the petitioner. In the absence of such material information one cannot draw inference that petitioner's initial appointment on 27.03.1980 was irregular. That apart, aforesaid decision in the case of Malti Kumari is not applicable for the reasons that the Court has not taken note of Five Men Committee report read with 20th September, 2007 order in which condition has been imposed. While regularizing the order of appointment, it is only stated that certain irregularities stated to have been committed and it is not supported by reasons to what extent irregularities have been committed by official respondents or by the petitioner. Such an issue was not the subject-matter in the Malti Kumari case. Therefore, the cited decision namely, Malti Kumari is hereby distinguished and it is not assisting the respondent's case in the present matter.



In the absence of assigning reasons in the Five Men Committee in respect of irregularities in appointment and further regularization of petitioner and others was not supported by reasons that there were certain irregularities. Such statement cannot be taken into consideration in the light of latest Apex Court's decision rendered in the case of *Brijmani Devi V. Pappu Kumar and another* reported in *AIR 2021 SC (Supp) 1585*. Para 22 to 25 reads as under:-

“22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasijudicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates Private Limited and Anr. v. Masood Ahmed Khan and Ors.-(2010) 9 SCC 496: (2010 AIR SCW 5715), wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decisionmaker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing



principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decision based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (see David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37])

(k) In all common law jurisdictions judgments play a vital role in



setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

23. *Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.*

24. *The Latin maxim “cessante ratione legis cessat ipsa lex” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself”, is also apposite.*

25. *While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction visavis the offence/s alleged against an accused.”*

Further in the case of *Kranti Associates (P) Ltd.*

and Another V. Masood Ahmed Khan & Ors. reported in



(2010) 9 SSC 496 in para 47 it is held as under:-

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one



common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reason or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future.



Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

Associate decision has been taken note of by Hon’ble Supreme Court in Brijmani Devi’s case cited (Supra).

12. In the light of these facts and circumstances, petitioner has made out a *prima facie* case for extension of arrears of salary during the intervening period from the date of termination namely 11.10.2004 to 20th September, 2007. The same shall be calculated and disbursed in favour of the petitioner within a period of three months from the date of receipt of this order, failing which petitioner is entitled to interest @ 6% *per annum*.

13. At this stage, learned counsel for respondent submitted that petitioner-employee is no more and Legal Heirs have been brought on record. In that event the arrears of salary shall be paid to the Legal Heirs of the deceased-employee after due identification.

14. Accordingly, the present petition stands disposed of .

(P. B. Bajanthri, J)

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