

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Civil Review No. 53 of 2019

- 1.Union of India through the Divisional Railway Manager,
(Personnel) East Central Railway, viz Ajay Kr. Singh.
- 2.Divisional Railway Manager, (Personnel) East Central
Railway, P.O.+P.S. Samastipur, District-Samastipur, Bihar.
- 3.Divisional Personnel Officer, East Central Railway,
P.O.+P.S. Samastipur, District-Samastipur, Bihar.
- 4.Assistant Divisional Engineer, East Central Railway,
P.O.+P.S. Bapudham, District-Motihari, Bihar.
- 5.Secretary, Ministry of Railway, New Delhi. Petitioners

Versus

Prema Devi. Opposite Party

With

Cont. Case (Civil) No. 187 of 2019

Prema Devi. Petitioners

Versus

- 1.The Union of India through General Manager, East Central Railway,
Office at Hazipur, P.O. & P.S. Hazipur, District-Vaishali, Bihar.
- 2.Divisional Railway Manager, (Personnel) East Central
Railway, Samastipur, P.O.& P.S. Samastipur, District-Samastipur, Bihar.
- 3.The State of Jharkhand. Opposite Parties

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Anil Kumar, ASGI
Mr. Pratyush Kumar (CGC)
For the Opposite Parties : Mr. Saibal Mitra, Adv.
Mr. Pradeep Kumar Verma, Adv.

12/01.09.2022 Heard learned counsel senior counsel for the petitioner in Civil Review No. 53 of 2009 and Mr. Saibal Mitra, assisted by Mr. P.K.Verma for the writ-petitioner.

2. The instant review petition is directed against the judgment dated 10th October, 2018 passed in W.P.(S) No. 5960 of 2017 by the Union of India. Before the Writ Court the order dated 9th August, 2017 passed by learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) in O.A. No. 051/196/2015 was under challenge whereby it had dismissed the O.A. seeking quashing of an order of recovery dated 30th September, 2013. Be it indicated that after hearing the parties the Writ Court had been pleased to set aside the order of the learned CAT and directed payment of cost of Rs. 5,000/- by respondent

No.1 to the petitioner. The operative part of the impugned judgment dated 10th October, 2018 is extracted hereunder:

“11.The aforesaid facts, reasons and judicial pronouncements were not property appreciated by the Central Administrative Tribunal, while deciding O.A. No. 051/196/2015 vide judgment and order dated 9th August, 2017. We therefore, quash and set aside the order passed by the Central Administrative Tribunal, Patna (Circuit Bench at Ranchi) in O.A. No. 051/196/2015 judgment and order dated 9th August, 2017.

12.This writ petition is allowed with a cost of Rs. 5,000/- (Rs. five thousand only) which will be paid by respondent no.1 through respondent no2. To this petitioner, within a period of twelve weeks from today.

3. A contempt petition has been filed by the writ petitioner alleging willful disobedience of the orders of the Writ Court which is tagged as analogous case to the present review petition. Learned senior counsel for the petitioner submits that by the impugned judgment the order of the learned CAT has been quashed, however there is no specific directions, so far as the order of recovery dated 30th September, 2013 is concerned which was under challenge before the learned CAT. There is no effective direction regarding the recovery part by the Writ Court. However, the writ petitioner has on a mistaken impression preferred contempt petition. Learned senior counsel for the petitioner refers to para-10 of the review petition where it has been stated that in compliance of the Writ Court's order, the rest amount of Rs.1,54,894/- has been paid to the respondent. It is further submitted that an employee could not have availed both the facilities i.e. outdoor medical facilities at railway hospital as well as Rs. 100/- in lieu of not availing the same. Hence an amount of Rs. 21,380/- paid to him towards Railway Employees Liberalized Health Scheme was deducted as it would have amounted to double benefit against the Rule. The same was brought to notice by the internal audit of the petitioner-East Central Railway. This aspect of the matter also needs reconsideration. However, since the impugned order of the learned CAT had been quashed by the Writ Court ideally, the matter ought to have been remanded to the learned CAT for fresh determination on merits. The present review petition has therefore been preferred to rectify the aforesaid mistake which is apparent on the face of record.

4. Learned counsel for the writ petitioner has strongly opposed the prayer. He has referred to the discussion made in the body of the impugned judgment where the learned Writ Court has also taken note that no notice or opportunity of hearing was given to the employee and observed that the impugned order of recovery was a non-speaking order. It was also held that determination of the amount to be recovered also could not be explained. He submits that there is a finding on merits on the question of recovery made against the employee that is deceased husband of the present writ petitioner. As such the impugned judgment does not suffer from any such error on the face of record which warrants review.

5. We have considered the submissions of the learned counsel for the parties and taken note of the grounds urged in support of the prayer for review made by the respondents/review petitioner. As stated at the outset, before the Writ Court the order of the learned CAT refusing to quash the recovery order passed against the employee was under challenge. The Writ Court examined the legality and correctness of the order of the learned CAT and on the basis of the facts and reasons recorded therein quashed the impugned order of learned CAT. In effect the order of recovery directed against the employee has remained intact as there is no effective direction or determination in the concluding part of the impugned judgment. Upon exercise of the powers of judicial review and quashing of the impugned judgment of learned CAT by a writ of certiorari, the matter ought to have been remanded to the learned CAT to decide the original application on its own merits.

6. In such circumstances, we are of the considered view that the impugned judgment to that extent suffers from errors apparent on the face of record. Since, we are of the opinion that the matter deserves to be remanded to the learned CAT to decide the original application in O.A. No. 051/196/2015 afresh, we refrain from commenting on the merits of the matter relating to recovery against the employee. Needless to say the learned CAT would not be prejudiced by any observations made by the Writ Court or by this Court while deciding the issue afresh. The review

petition is allowed, accordingly.

7. Since the order of the Writ Court stands reviewed, no case of contempt survives. Accordingly, the Contempt Case (Civil) No. 187 of 2019 is dismissed.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Fahim/Amardeep/