

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.625 of 2023

In
Civil Writ Jurisdiction Case No.4404 of 2023

Purushottam Kumar Jha, Son of Late Kishori Nath Jha, resident of Dharampur (Ujan), P.O.- Lohna Road, P.S.- Sakatpur, Distt. - Darbhanga, Bihar. (Correspondence Address) Purushottam Kumar Jha, 5B/24, Indrapuri, P.O. - Keshri Nagar, P.S. - Patliputra, Patna - 800024 is basically field clerk but is conditionally deputed as a law officer in the Co-operative department, Govt. of Bihar, New Secretariat, Patna as well as is posted as a clerk in the office of the district Audit Officer, Co-operative societies, Tazpur Road, Samastipur (Bihar).

... .. Appellant/s

Versus

1. State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna - 800015.
2. Patna High Court, Patna through the Registrar General, Patna High Court, Patna - 800028.
3. Principal Secretary, Department of Co-operation, Govt. of Bihar, New Secretariat, Patna - 800015.
4. Registrar, Co-operative Societies, Bihar, New Secretariat, Patna - 800015.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Purushottam Kumar Jha (In Person)
		Mr. Prashant Sinha, Amicus Curiae
For the Respondent/s	:	Mr. Amit Prakash, GA-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-07-2023

Writ petition, according to the petitioner/appellant, was filed in compliance of order dated 02.09.2022 of the Hon. Supreme Court of India to direct the Respondent No. 1 to create post/shadow post of Law Officer in the Cooperative Department, Bihar, Patna and to post the petitioner against the



sanctioned post in the light of Annexure-8. At the outset we have to notice the order referred to by the petitioner is produced at Annexure-22. The petitioner had approached the Hon. Supreme Court with the very same prayer of creation of a post of Law Officer in the Cooperative Department which however was refused to be considered by the Hon. Supreme Court. Their Lordships reserved liberty to the petitioner, to file an appropriate application before the High Court and also directed expeditious consideration of the same as and when such application is made, purely on its own merits.

2. The writ petition was filed which was disposed of by the impugned judgment. The impugned judgment shows that the petitioner at the outset sought liberty to approach the respondent authorities for redressal of his grievances. The learned Single Judge granted the liberty and disposed of the writ petition as not pressed. An appeal is filed raising scurrilous allegations against the learned Single Judge of the impugned order being a clear insult to the order of the Hon. Supreme Court of India and that the appellant never requested the withdrawal of the petition or liberty to approach the respondent authorities. We are unable to accept the contention raised by the appellant but, since he was appearing in person, we proceeded



to consider the matter on merits.

3. The appellant was appearing in person and could not argue the matter effectively, hence, we appointed an Amicus Curiae, Shri Prashant Sinha; on the last occasion with the appellant's consent. Today when the matter was called along with the petitioner/appellant who was present in person the Amicus argued the case.

4. It was pointed out that the Bihar State Litigation Policy, 2011 specifically referred to the recommendation of the 13th Finance Commission and emphasized the necessity to formulate a State Litigation Policy. The said policy was read over to emphasize that there is a monitoring system put in place so as to constantly ensure that the stand/defence of the government is put forth properly before the various Courts. The Litigation Policy was also intended at minimizing the number of cases and ensuring a uniform stand in litigation against the State. Paragraph 2.2(a) of the Policy, also speaks of appointment of a Nodal Officer, to be followed by every department. It is also argued that Annexure-8 indicated the appellants having specifically chosen him for the purpose of liaising with the law officers of the State, handling matters of the cooperative department. It is on the strength of these that prayer is made for



creation of a post of law officer and the petitioner to be posted thereon.

5. The learned Government Advocate on the other hand opposed the prayer of the petitioner especially pointing out that there is no post of Law Officer in the cooperative department. The petitioner, a clerk in the state government was deputed to the field office of the cooperative department and was entrusted with the legal affairs, especially since he was a law graduate and a former advocate practicing in this Court. It was also pointed out that because of the recalcitrant attitude of the appellant and his refusal to work in any other seat other than a seat dealing with legal affairs; it resulted in his compulsory retirement. The compulsory retirement had travelled up to the Hon. Supreme Court, the decision in which is reported as *Purushottam Kumar Jha v. State of Jharkhand*, 2006 (3) PLJR (SC) 63; a reading of which would clearly demonstrate the character and conduct of the appellant.

6. We are not convinced that there could be any creation of a post for accommodating a clerk in that created post of Law Officer however good he is in law and adept he is at handling cases for the department. It is for the department and the government to decide on whether they should have a post of law officer created in a particular department to handle its legal



affairs. Even the litigation policy speaks of a Nodal Officer; who can be any person in the department especially since the litigation policy also does not create a cadre of Nodal Officers.

7. Furthermore, it has to be noticed that the petitioner, who was appointed as a clerk on compassionate ground, while given the work of monitoring of legal matters, an identity card was also issued showing him as a legal assistant. The petitioner then refused to work as a clerk insisting for legal work and designation as Legal Assistant or Law Officer on the basis of the identity card. A departmental inquiry was initiated and he was compulsorily retired. The Hon. Supreme Court found on an examination of entire records and evidence that the order of compulsorily retiring the appellant cannot be held illegal, unlawful or contrary to law. The order of the learned Single Judge and Division Bench of the High Court confirming the order of compulsory retirement was affirmed.

8. Despite this their Lordships taking a very sympathetic view and also considering the fact that the petitioner was appearing as party in person, passed an order to reinstate him in services, on his withdrawing the allegations against respondents and on filing an undertaking that he would work as clerk without insisting on assignment of only legal



matters. It was observed that unfortunately the matter could not be settled; presumably on the recalcitrant attitude of the appellant. Hence an order was passed on merits affirming the compulsory retirement but again provided an escape valve insofar as making it open to the respondents to consider the case of the appellant, keeping in view the family circumstances of the appellant.

9. It is very evident that the State took a sympathetic view and showed magnanimity, and took back the appellant into service. The present litigation indicates that the recalcitrant attitude of the appellant continued. Despite his prayer to create a post of Law Officer and confine him to legal work having led to a compulsory retirement; he insists on continuing with such requests. It is also pertinent that he has not, in the writ petition disclosed the earlier proceedings which we find to be a suppression of material facts. We would have imposed very heavy costs on the appellant, for suppression of material facts and for making scurrilous allegations against the learned Single Judge; but refrain ourselves from doing it only since the matter was argued by an Amicus appointed by us, that too ably, in the teeth of the odds against the appellant.

10. We reject the appeal cautioning the appellant



from such conduct in future.

11. We direct the High Court Legal Services Committee to pay the applicable remuneration to Shri Prashant Sinha, who provided legal assistance to the appellant.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

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