

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.942 of 2017

In

Civil Writ Jurisdiction Case No.3836 of 2015

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The Bihar State Food and Civil Supplies Corporation Patna through
Managing Director Bihar State Food and Civil Supplies Corporation 5th Floor,
Sone Bhawan, Patna.

... .. Appellant/s

Versus

1. The Dy. Secretary, Bihar Human Right Commission 9, Bailey Road, Patna
2. Nirmal Kumar Sinha, Son of not known Resident of Plot no. A/310, West of Central Park A.G. Colony , P.O. Ashiana Nagar, District- Patna.
3. The Jharkhand State Food and Civil Supplies Corporation, Ranchi.
4. The District Manager, State Food and Civil Supplies Corporation Giridih.
5. The Union of India through Joint Secretary, Ministry of Home Affairs, New Delhi.
6. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
7. The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Ranchi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar Singh, Advocate Mr. Utkarsh Utpal, Advocate
For the Respondent No.2:		Mr. Dhruva Mukherjee, Advocate Mr. Dhanjay Kumar, Advocate
For the State	:	Mr. P.K. Sahi, Sr. Advocate(A.G.) Mr. Alok Ranjan Yadav, AC to AAG-5
For the J.S.F.C.	:	Mr. Arup Kumar Chongdar, Advocate Ms. Eesha, Advocate
For the State of Jharkhand:		Mr. Sanjay Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-02-2023

The present L.P.A is filed by Bihar State Food and Civil
Supplies Corporation (for short 'B.S.F.C.'). They have assailed
the order of the learned Single Judge dated 17.04.2017 passed in
C.W.J.C No. 3836 of 2015.



2. 2nd Respondent-Nirmal Kumar Sinha who was ex-employee of B.S.F.C. On reorganization of State of Bihar in the year 2000, he had opted Jharkhand State Food and Civil Supplies Corporation (for short 'J.S.F.C.'). He has attained age of superannuation and retired from service on 31.08.2008. His retiral benefits which were due to him have not been settled in the result he had filed a complaint before the Bihar Human Rights Commission to redress his retiral benefits and other service conditions. Bihar Human Rights Commission proceeded to pass order in favour of 2nd Respondent-Nirmal Kumar Sinha on 16.12.2014, while giving direction to the B.S.F.C. in respect of settling the 2nd Respondent-Nirmal Kumar Sinha's claim. Feeling aggrieved and dissatisfied with the order of the Bihar Human Rights Commission dated 16.12.2014, B.S.F.C invoked remedy under Article 226 in filing C.W.J.C. No. 3836 of 2015. The learned Single Judge has dismissed the writ petition while directing as follows:-

“35. On the facts and in the circumstances of the case, in the opinion of this Court, the ends of justice would meet if I pass the order on following terms :-

(a) BSFC shall pay all the admissible pre-retirement dues of the respondent no.2



including difference amount against 5th and 6th pay revision commission recommendations, if any, in tune with the payments made to other employees along with interest at the rate of 8% per annum from the due date till the date of actual payment within three months from the date of receipt/production of a copy of this order.

(b) JSFC is directed to make payment of all the admissible post-retiral dues of the respondent no.2 along with interest at the rate of 8% per annum within a period of three months from the date of receipt/production of a copy of the order.

(c) In case JSFC and/or BSFC fail(s) to pay the amount within the period stipulated hereinabove, they/it shall also be liable to pay cost of Rs.50,000/- (Rupees fifty thousand) to the respondent no.2 and the employer(s) will be at liberty to recover the amount from the officer(s) responsible for causing the delay in payment.”

3. Feeling aggrieved and dissatisfied with the order of the learned Single Judge the present L.P.A. is presented.

4. Learned counsel for the Appellant-B.S.F.C. submitted



that Bihar Human Rights Commission is not a competent authority to redress the grievance of the 2nd Respondent-Nirmal Kumar Sinha, in so far as his service conditions with J.S.F.C read with his retirement on 31.08.2008. It is submitted that complaint before Bihar Human Rights Commission is not maintainable and so also Bihar Human Rights Commission has no jurisdiction to deal with service conditions of an employee of the J.S.F.C. It is also submitted that certain benefits which were required to be extended on behalf of the B.S.F.C. was already extended to the 2nd Respondent-Nirmal Kumar Sinha. The learned Single Judge has not appreciated the aforementioned contentions, however, he has exercised extraordinary jurisdiction of this Court under Article 226 of the Constitution as is evident from Para-29 of the learned Single Judge order. It is submitted that when there is a territorial jurisdiction issue involved in the case to the extent that 2nd Respondent-Nirmal Kumar Sinha as on 31.08.2008 he was an employee of J.S.F.C. and he has retired when he was working in State of Jharkhand therefore, due to lack of territorial jurisdiction Bihar State Human Rights Commission was not an appropriate forum. This issue has not been taken note of by the learned Single Judge.

5. *Per-contra*, learned counsel for the State submitted that



there is an error in entertaining complaint by the Bihar Human Rights Commission and so also entertaining writ petition by the learned Single Judge.

6. On the other hand learned counsel for the 2nd Respondent Mr. Dhruba Mukherjee, vehemently contended that complaint before the Bihar Human Rights Commission is entertainable in the light of Section 2 (1)(d) – as it relates to human rights read with Section 18(e) and further submitted that learned Single Judge has exercised power under Article 226-extraordinary jurisdiction, therefore, there is no infirmity in the order of the learned Single Judge. It is also submitted that appellant as well as J.S.F.C. were still required to settle his various service conditions due.

7. Heard learned counsels for the respective parties.

8. Core issues involved in the present *lis* are as follows:-

- (i) Whether complaint of the 2nd Respondent before the Bihar Human Rights Commission is entertainable or not?
- (ii) Whether learned Single Judge was right in entertaining writ petition or not?

9. Undisputed facts are that State of Bihar was reorganized in the year 2000. Prior to reorganization 2nd



Respondent-Nirmal Kumar Sinha was an employee of B.S.F.C. On reorganization of the State of Bihar, he had opted to serve in J.S.F.C, State of Jharkhand, accordingly, his option was accepted by the concerned authority and he was discharging his duties in J.S.F.C., State of Jharkhand. He has attained age of superannuation and retired from service on 31.08.2008. His retiral benefits and other service conditions were not settled by the J.S.F.C. and B.S.F.C. therefore, he had invoked remedy of filing complaint before the Bihar Human Rights Commission. He had approached the wrong forum, for the simple reason that service conditions of the 2nd respondent is governed by certain regulations of the B.S.F.C. or J.S.F.C. Further, if the service conditions is not settled in that event, he had the remedy of filing representation to the concerned authority. Still if it was not considered, in that event he has the remedy of invoking Article 226 of the Constitution with reference to territorial jurisdiction of the High Court. Therefore, the complaint entertained by Bihar Human Rights Commission is without authority of law. Definition of human rights under the Protection of Human Rights Act, 1993 would not assist the 2nd respondent's grievance. State Human Rights Commission vested with jurisdiction to order compensation for Human Rights violations.



He had remedy only under the relevant regulations of the B.S.F.C. or J.S.F.C. In not settling the service conditions including any monetary benefits it does not amount to violation of human rights therefore, Bihar Human Rights Commission has committed glaring error in entertaining the complaint therefore, it is answered that Bihar Human Rights Commission has no jurisdiction to decide service conditions of an employee of the B.S.F.C./J.S.F.C.

10. The learned Single Judge has entertained the writ petition and extended certain reliefs to the 2nd Respondent. This Court should have restricted itself only to the extent whether Bihar Human Rights Commission was competent authority to redress the grievances of the 2nd Respondent insofar as service conditions or not? In other words learned Single Judge has exceeded its jurisdiction, firstly entertaining writ petition insofar as extending relief to the 2nd Respondent is not maintainable in view of the fact that 2nd Respondent was serving J.S.F.C. as on 31.08.2008. He had cause of action on 31.08.2008. Therefore, the territorial jurisdiction of this Court is ousted in so far as 2nd respondent's grievance is concerned with effect from the date on which he had opted J.S.F.C. with reference to State Reorganization in the year 2000.



11. Insofar as territorial jurisdiction is concerned it is necessary to take note of amendment of Article 226 of the Constitution in the year 1963 for the accrual of cause of action is to confer jurisdiction on a High Court under Article 226. Legislative history of the constitutional provisions makes it clear that after 1963, cause of action is relevant and germane and writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises. In the present case grievance of the 2nd Respondent-Nirmal Kumar Sinha accrued in the State of Jharkhand with reference to the fact that he had attained age of superannuation and retired from service on 31.08.2008 while he was working in the J.S.F.C. The ultimate relief of the 2nd Respondent-Nirmal Kumar Sinha is required to be redressed by the office of the J.S.F.C. Assuming that if anything is to be redressed by B.S.F.C. in that event J.S.F.C. has to obtain necessary material information from B.S.F.C. in the light of the fact that State of Bihar was re-organized in the year 2000. 2nd Respondent had opted J.S.F.C. when he had been working in the then undivided B.S.F.C. In other words all service conditions read with records and policy decision of the respective States in so far as redressing the grievance of such of those employees of the then B.S.F.C. who



have opted to J.S.F.C. was required to be redressed only by J.S.F.C. Apex Court in the case of *Alchemist Ltd. vs. State Bank of Sikkim* reported in (2007) 11 SCC 335 considered the territorial jurisdiction of High Court under Article 226(2). The principle laid down in the aforementioned decision is aptly applicable to the case in hand insofar as maintainability of complaint filed by 2nd Respondent-Nirmal Kumar Sinha before the Bihar Human Rights Commission and others is concerned. Bihar Human Rights Commission has no jurisdiction to issue a direction or taking any action against B.S.F.C. when there is no master and servant relationship between B.S.F.C.-Appellant and 2nd Respondent-Nirmal Kumar Sinha as it ceased on account of re-organization of State of Bihar in the year 2000 read with the fact that 2nd Respondent had opted to join J.S.F.C. Consequently the learned Single Judge order is without jurisdiction and authority of law.

12. In the light of these facts and circumstances, B.S.F.C.-appellant has made out a *prima-facie* case so as to interfere with the order of the learned Single Judge dated 17.04.2017 passed in C.W.J.C. No. 3836 of 2015. Accordingly, it is set aside and order of the Bihar Human Rights Commission dated 16.12.2014 is set aside.



13. During pendency of the litigation the 2nd Respondent is stated to have been extended certain service benefits including monetary benefits and still his claim is due before the B.S.F.C. and J.S.F.C., if it is so, he is at liberty to submit a detailed representation to the respective authorities. B.S.F.C is hereby directed to pass detailed speaking order in the event of submission of representation by the 2nd Respondent within a reasonable period of time of three months from the date of receipt of representation, if any. In so far as claim against J.S.F.C. is concerned liberty is reserved to the 2nd Respondent to approach the concerned authority.

14. With the above observation the L.P.A. No. 942 of 2017 stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/
Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
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