

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.138 of 2022

In
Civil Writ Jurisdiction Case No.6189 of 2020

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Rupesh Kumar Sinha, Son of Late B.N. Sinha, Resident of 402, Le Grassia Apartment, Vasundhara Homes, Road No. 4, Nehru Nagar, P.O. and P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Additional Chief Secretary, Government of Bihar-cum- Chairman, Women Development Corporation, Department of Social Welfare, Government of Bihar.
3. Women Development Corporation through the Managing Director, Women Development Corporation, Department of Social Welfare, Government of Bihar, Patna.
4. The Managing Director, Women Development Corporation, Department of Social Welfare, Government of Bihar, Patna.
5. The Administrative Officer, Women Development Corporation, Department of Social Welfare, Government of Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Vikash Kumar Pankaj, Advocate
For the WCDC	:	Ms. Pallavi Pandey, Advocate Mr. Madan Mohan, Advocate Mr. Ritik Shah, Advocate
For the State	:	Mr. Ravi Bhardwaj, AC to G.A. 13

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 05-01-2024 CWJC 6189 of 2020 was filed by the petitioner seeking following reliefs:-

“(i) For a direction to the Respondents to pay all the arrears of salary and dues to the Petitioner which has been wrongly withheld by the Respondents from the month of



January, 2020 till date;

(ii) For issuance of an appropriate Writ for quashing the Show Cause Notice dt. 19.03.2020 bearing letter No. 2936 issued by the Respondent No. 5, Women Development Corporation (hereinafter referred to as WDC) whereby the promotion already given to the Petitioner on 26.02.2019 from the post of State Project Manager (SPM for short) to the post of Project Director (PD for short) has been kept in abeyance;

(iii) For issuance of an appropriate writ against the direction in the show cause notice to the petitioner to explain why the promotion given to him to the post of PD be not treated in violation of Women Development Corporation's HR Policy and established rules and procedures and therefore why the same should not be held responsible for violations and circumvention of established rules of WDC for his personal gains;

(iv) For a direction to the Respondents nos. 1 and 2 to consider and dispose of the appeal dated



30.04.2020 filed by the petitioner against the interim decision taken with regard to the promotion of the Petitioner as PD-WDC to be kept in abeyance vide the impugned Show Cause dated 19.03.2020.

(v) For a direction the Respondents to pay to the Petitioner the interest that has accrued on the arrears of the salary and dues to the Petitioner which has been wrongly withheld by the Respondents from the month of January, 2020 till date; and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case.”

2. The writ petition was filed on 05.06.2020. During the pendency of the writ petition, the promotion of the petitioner to the post of Project Director was cancelled by an order dated 08.06.2020. The petitioner filed an application vide I.A. No. 1 of 2020 seeking amendment in the writ petition so as to challenge the subsequent order dated 08.06.2020.

3. After having considered the pleadings on record, the Court by order dated 23.08.2021 passed in CWJC No. 6189 of 2020, in paragraph 27 held as under:-

“27. In my considered opinion, a



person appointed against a post on contractual basis even after following due process of selection cannot be promoted to a higher position invoking the provisions of the service rules frame by the Corporation. Situated thus, in the Court's opinion, the decision by the Corporation to appoint the petitioner as Project Director by way of promotion was evidently contrary to the service rules. The conclusion arrived at by the Corporation to the aforesaid effect cannot be faulted with."

4. The Court dismissed the writ petition with the following observations made in paragraphs 28 to 31 :-

"28. Further, nothing has been brought to my notice, which can suggest that the petitioner's engagement as State Programme Manager on contractual basis is still continuing. It is evident from the pleadings on record that immediately after the show cause notice was issued to the petitioner, he started filing applications for grant of leave on health grounds. In such circumstance, the question of the petitioner's claim for salary for the period he remained absent from the office needs to be considered and determined by the Corporation. The Court at this stage observes that the Corporation must ensure payment of salary to the petitioner, if not already paid, for the period during which he in fact discharged the functions of the Project Director, though the Corporation has subsequently found, and validly so, that his



promotion to the said post was illegal.

29. Reliance placed by Mr. Giri on Supreme Court's decisions, as noted above, does not serve any useful purpose in the facts and circumstance of the present case for the reason that a show-cause notice was issued to the petitioner pursuant to which he had submitted his response, and since the Court is of the opinion that on the basis of facts pleaded in the writ application and the materials brought on record by the petitioner himself, the impugned action of respondent Corporation to the extent the same relates to annulment of the petitioner's appointment as Project Director does not require any interference.

30. The impugned action of the Corporation, in my view, cannot be said to be punitive in nature nor stigmatic, in the facts and circumstances, as discussed above. Nevertheless, it is observed that in any event, the action of the Corporation shall not be treated to be punitive in nature for any purpose, in respect of the petitioner.

31. Consequently, I do not find any merit in this application, which stands dismissed. It is, however, observed that the respondent Corporation shall ensure that the petitioner is paid his salary for the period for which he served the Corporation. Such payment must be made within two months from the date of receipt/production of a copy of this order. It is made clear that the petitioner shall be paid



salary of the post, which he in fact was holding. The petitioner shall be at liberty to make a representation in this regard before the Managing Director of the Corporation, which shall be duly considered. In case, the petitioner's representation does not find favour with the Managing Director of the Corporation, he will be obliged to pass a reasoned and speaking order assigning reasons why the petitioner's claim for salary is not justified."

5. It is relevant to mention that before dismissing the writ petition of the petitioner, I.A. No. 1 of 2020 was disposed of. The present review application has been filed seeking review of the aforesaid order of this Court on the ground that there were three other interlocutory applications filed on behalf of the petitioner, namely, I.A. No. 2 of 2020, I.A. No. 3 of 2021 and I.A. No. 4 of 2021 out of which I.A. No. 2 has not been considered by this Court while disposing of the writ application.

6. In I.A. No. 2 of 2020, the petitioner had raised a grievance that his joining on the post of State Project Manager after 08.07.2020 had been declined and, therefore, the petitioner sought an amendment seeking quashing of an order dated 10.08.2020 passed by Respondent No. 5, i.e., the Administrative Officer, Women Development Corporation, Department of Social Welfare.



7. By filing I.A. No. 3 of 2021, the petitioner sought for addition of two more prayers i.e. for quashing of advertisement No. 4/2020 calling for applications for filling of the post of the Project Director. Further, stay of further action in pursuance to the said advertisement for filling up of the post of Project Director.

8. Yet another interlocutory application i.e. I.A. No. 4 of 2021 has been filed by the petitioner seeking impleadment of one Ajay Kumar Srivastava as a party respondent who was appointed as the Project Director, Women Development Corporation.

9. Learned senior counsel appearing on behalf of the petitioner has submitted that non-consideration of I.A. No. 2 of 2020 is the sole reason for preferring this review application

10. I have perused the records of the writ proceeding as well as the pleadings and grounds taken in the present review application seeking review of the order. No ground has been taken in the review application that I.A. No. 2 of 2020 was specifically pressed on behalf of the petitioner for passing an order by this Court. Secondly, the Court is of the view that I.A. No. 2 of 2020 raised altogether different cause of action, not connected with the main issue involved in the writ petition



which primarily related to the petitioner’s challenge to cancellation of his promotion to the post of Project Director from the post of State Project Manager.

11. In such view of the matter, in my opinion, there is no merit in the review application, which is accordingly dismissed. I, however, make it clear that while disposing of the writ petition, no opinion has been expressed on the pleadings made in said I.A. No. 2 of 2020 in relation to the grievance raised therein. It is accordingly, observed that the petitioner shall not be precluded from approaching appropriate forum for redressal of his grievance as were raised in I.A. No. 2 of 2020.

(Chakradhari Sharan Singh, J)

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