

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1270 of 2023

In
Miscellaneous Jurisdiction Case No.1129 of 2022

-
-
1. Mahendra Kumar (Mahendra Kumar, I.A.S.) Son of Late Ram Lakhan Prasad Yadav Resident of Village Koldiha, P.S.- Sirdala, District- Nawada, earlier residing at Ward No. 21, Mohalla- Senapat, Near Town Hall, P.S. and District- Darbhanga, The Managing Director, Bihar State Hydroelectric Power Corporation Limited (wrongly described as Bihar Hydro Electric Power Corporation Limited, Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna, Police Station- Sachivalaya, District- Patna.
 2. V.K. Mishra (Vijay Kumar Mishra, Son of Late Nand Kishor Mishra Resident of Sai Chak, Makhdumpur, Near Middle School, Beur, Anishabad, P.S.- Beur, District- Patna, Manager (Personnel and Administration) Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna, Police Station- Sachivalaya, District- Patna.

... .. Appellant/s

Versus

1. Dharm Sheela Devi Wife of Hirdaya Nand Pandey, Hirdaya Nand Pandey (deceased), Son of Late Gupteshwar Pandey R/o of Mohalla- Kailashpuri, Beur Jail Road, Sainchak, P.S.- Beur, District- Patna.
2. Mishri Prasad, Son of late Kashi Razak Resident of East Gola Road Tulsi Nagar, P.S.- Danapur, District- Patna.
3. Jitkeshwar Thakur, Son of late Mangur Thakur Resident of Sipara Matkhan, P.S.- Beur, District- Patna.
4. Sanjeev Hans, The Principal Secretary, Department of Energy Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P. N. Shahi, Sr. Advocate with Mr. Mritunjay Kumar, Advocate
For the State	:	Mr. Yogendra Pd. Sinha, AAG 7
For the Res. Nos. 1-3	:	Mr. Brij Bihari Tiwary, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-02-2024



The appellants are before us challenging the contempt proceedings taken by the learned Single Judge as revealed from the impugned order.

2. The contempt petition was from a direction issued earlier by the learned Single Judge in an application filed by the writ petitioners. Insofar as the adoption of the 7th Central Pay Commission report to the employees of the Bihar State Hydroelectric Power Corporation Limited (for brevity, Corporation), on 12.01.2022 the learned Single Judge passed an order in the writ petition finally disposing it off. The operative portion of which is extracted hereunder:

“4. The grievance of the petitioners are in short compass as to whether 7th Central Pay Commission Report is required to be given effect to in so far as Corporation employees or not? The Respondent Corporation is hereby directed to take a decision whether employees of Corporation are entitled to 7th Central Pay Commission or not? Such a decision shall be taken within a period of four months from the date of receipt of this order.”

3. The direction was to consider the grievance raised within a period of four months. Since the Corporation had not considered the matter within the stipulated time, the writ petitioners filed contempt application on 01.07.2022. While the same was pending on 15.09.2022, the Board of Directors rejected the request on 07.10.2022. The Managing Director



passed consequential order which is produced along with the supplementary affidavit in the appeal by the writ petitioners.

4. We heard the learned Senior Counsel appearing for the appellants and the learned Counsel appearing for the writ petitioners, who are respondents in the appeal.

5. The learned Counsel for the respondents points out that only when the contempt case was filed, the order was passed by the Corporation. Later a further petition was filed before the Contempt Court seeking three months time to implement the order and also claiming that there is dearth of funds with the Corporation.

6. The learned Senior Counsel responds that such an application need not have been filed, and the appellants were ill advised. The learned Senior Counsel also submits that the 7th Pay Commission report does not bind the Corporation.

7. We are also of the opinion that the prayer made before the Court, considering the contempt case, was misplaced, when already the consideration as directed by the judgment, from which the contempt case arise was carried out and the claim rejected. In fact, the order specifically indicates that their claim cannot be considered as of now. In future, probably when the Corporation's finances are better, there may be a



consideration.

8. We are told that the learned Single Judge had closed the contempt petition leaving liberty to file a fresh MJC if the LPA is dismissed.

9. We are of the opinion that no contempt proceedings can be initiated or proceeded with when orders have been passed rejecting the application. The order passed was confined to a consideration. Even if considered in favour of disbursement of benefits, and if it has not been done, there would be no cause for contempt. Here, the representation stood rejected. The remedy would be to challenge that order.

10. We are conscious of the fact that the impugned order no more survives, since there is an order passed closing the contempt proceedings. We hence dispose of the appeal making it clear that there can be no contempt proceedings initiated but, we hasten to add that the writ petitioners would be entitled to agitate their cause by way of a challenge to the order now passed, in a proper writ proceeding. We also make it clear that the observations made by us on the financial stringency are only on the submission of the learned Senior Counsel and this is a mere *prima facie* observation which would not regulate the consideration of a fresh writ petition filed.



11. The appeal stands disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.02.2024
Transmission Date	

