

Md.Nizamuddin,advocate Vs. the State of Bihar and ors

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Court : Patna

Decided On : Sep-11-2013

Appellant : Md.Nizamuddin,advocate

Respondent : The State of Bihar and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case
No.4270 of 2006

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Md.Nizamuddin, Advocate, Ex- Government Pleader, Patna, Son of Late Moizul Haque resident at Sharf Apartment, Flat No.105, Fraser Road, PS Gandhi Maidan, District- Patna Petitioner/s Versus 1. The State Of Bihar 2. The Secretary, Law Department, Government of Bihar, Patna 3. The Secretary, Finance Department, Govt. of Bihar, Patna 4. The Collector, Patna Respondent/s

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Appearance : For the Petitioner/s : Mr. Nawal Kishore Sinha Mr. Binoy Kumar For the Respondent/s : Mr. A. B. Sinha, SC 1.Mr Rajesh Ranjan, AC to SC 1.=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI CAV

JUDGMENT

Date:

11. 09-2013 Petitioner is said to be a former Government Pleader appointed by the State of Bihar on 23.8.1996. He used to conduct government cases pending before Civil Courts, especially before the Civil Court, Patna. Petitioner is supposed to have carried out his responsibility and duty diligently. However, when he submitted his bills for payment before the Collector, Patna, the same has not been accepted or turned down by the respondents, therefore, the writ application.

2. In the normal course of things, if the dispute raised by the petitioner was based on the accepted claims raised by him with no conflict or denial of the said liability by the State authorities, this Patna High Court CWJC No.4270 of 2006 dt.11-09-2013 2/4 Court would have surely exercised its power under Article 226 of the Constitution of India giving a direction for payment. However, in the present case, there is a serious dispute as to the terms and conditions of the appointment of the petitioner which according to him applies, as well as the stand, which has been taken by the respondent State in their various counter affidavits filed from time to time.

3. It is the case of the respondents that the petitioners appointment would be governed by Rule 426 of the Civil Court Rules whereas it is the case or claim of the petitioner that his case would be covered in the similar manner as the claims or the bills, which were settled in case of some previous Government Pleaders appointed by the State.

4. This Court had made various efforts to see that some kind of reconciliation was possible in the dispute and the accepted bills could be settled. However, affidavits filed both at the level of L.R., Government of Bihar as well as the district authorities have made things more complicated in the sense that they seriously contest whether the bills, which have been raised by the petitioner, are in accordance with the requisite rules, which govern such bills.

5. In the fifth counter affidavit, which has been filed on behalf of respondent no.2, they have clearly taken a stand that bills in Patna High Court CWJC No.4270 of 2006 dt.11-09-2013 3/4 which there have been no dispute at all, they have already been passed but some of the bills with regard to disposal of suits and what amounted to disposal is being seriously contested.

6. It is a matter between a litigant and a lawyer and the question of settlement of bills have to be made between them in terms of the clear understanding as to the nature of engagement and the basis of engagement made by the State authorities and to what the lawyer thinks he would be entitled to.

7. The dispute being what they are, this Court has difficulty in giving a clear direction upon the respondents to make payment of the bills, which have been raised by the petitioner and the ambit of the dispute cannot be put better than the decision taken by the Secretary Law- cum- L.R., Government of Bihar in his order dated 23.1.2013, which is Annexure- I to the 5th supplementary counter affidavit.

8. In the above disputed facts, it is not possible to adjudicate the same within the ambit of Article 226 of the Constitution of India. The writ application is dismissed as the Court would not like to exercise its extraordinary jurisdiction in the above circumstances. However, the Court leaves it open to the petitioner to explore any other forum including a civil court of competent jurisdiction for an appropriate declaration or adjudication of the Patna High Court CWJC No.4270 of 2006 dt.11-09-2013 4/4 dispute, which requires taking of evidence both oral as well as documentary kind. (Ajay Kumar Tripathi, J) sk

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