

Garvi Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-04-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : L.P.A. No. 200 of 2003

Appellant : Garvi Devi

Respondent : The State of Bihar and ors.

Advocate for Def. : S.K. Ghose, A.A.G. 2 and R.B.N. Singh, J.C. to S.C. 3

Advocate for Pet/Ap. : C.M. Chaurasia, Adv.

Disposition : Appeal allowed

Prior history : Ravi S. Dhava, C.J. 1. This case only reflects that the administration does not take any decision on its responsibility. In the present case, in the matter relating to Garvi Devi, the direction for reinstatement was accepted. Not-only this, the respondents reinstated the petitioner. The order directing reinstatement was not challenged. Not only this, the respondents finding that it is writ large on the record that she was prevented from joining her duties recorded in the administrative files

Judgement :

Ravi S. Dhava, C.J.

1. This case only reflects that the administration does not take any decision on its responsibility. In the present case, in the matter relating to Garvi Devi, the direction for reinstatement was accepted. Not-only this, the respondents reinstated the petitioner. The order directing reinstatement was not challenged. Not only this, the respondents finding that it is writ large on the record that she was prevented from joining her duties recorded in the administrative files that there would be no breakage of service, that the continuity of service would be maintained and her seniority as she was entitled to will be given. Clearly, nothing was left in this case to create issues when none existed. In short, with reinstatement full back wages should have been followed as the respondents themselves accepted that she was entitled to continuity of service without any break and placement of her seniority.

2. The petitioner appellant filed the present Letters Patent Appeal apprehending that the state of record is such that she is unlikely to receive the benefits despite reinstatement having been ordered. She seeks certiorari and clarity on the order in the writ petition. At one stage it was contended before the Court that the petitioner appellant Garvi Devi was not even employed during certain periods. On this, this Court issued notice under Section 340 of the Code of Criminal Procedure, 1973. On the cause shown, it is accepted that the petitioner appellant should not see a break in service and that she has been given continuity of service and reinstatement. This should have ended the matter.

3. The explanation being given in the affidavit showing cause against the notice under Section 340 of the Code is, to the effect, that her arrears or back wages were not given because the High Court made no direction for it. This aspect is mentioned in paragraph 6 that 'Since the Hon'ble Court has not ordered for the payment of salary of the appellant for the intervening period (because the Hon'ble Court did not think proper to make such order), therefore, the said salary was not paid.' Brackets by the Court.

4. With a reinstatement order it was not necessary for the High Court to make another order. The portion within bracket is the comment of the deponent.

5. In paragraph 7 it is explained without reservations 'However, the period in question will be counted for the purpose of seniority etc. and vide memo No. 1805 dated 8-8-2002 (Annexure-7) of the writ petition) it was already decided that there will be no breakage in the service due to the period in question.'

6. After having given an explanation in paragraph 7 the situation should have been gracefully accepted.

7. But this was not all. In paragraph 8 after accepting that there should have been no breakage of service and that the petitioner appellant has been given continuity of service as well as her due seniority, again an unnecessary comment is made that 'as there was no order for payment of salary for the intervening period, hence in that view of the matter the appellant is not entitled for the salary for the period in question and the Hon'ble Single Judge in CWJC No. 587 of 2003 vide order dated 7-2-2003 has rightly rejected the said claim of the appellant.'

8. The reference being made to the order dated 7th February, 2003 is incorrect and has been torn out of its context. The order has to be seen as a whole. The learned Judge has also recorded that 'it is true that the petitioner was prevented for performing her duties during the relevant period, (emphasis by Court) and in such a case it is open to the Court to pass appropriate consequential order in that regard but no such order was passed.' It was in these circumstances that the Court had left the matter on the administration to take responsibility and either certify that she was not entitled to receive salary or accept that she was prevented from joining the duties. Picking up observation in one part and overlooking other observations in the same order of the Court is a very ungraceful conduct on the part of the administration. This leaves unnecessary litigation for petty matters when the litigants have been granted relief by the High Court. This lingers the litigation then creates another litigation. If it was not perjury then the explanation was grossly incorrect.

9. Whenever is due to the petitioner appellant now that there is no breakage in her service, and continuity of service has been granted, along with her due seniority, she is entitled to receive back wages, and a direction in the nature of mandamus issues to the respondents to pay, accordingly.

10. The Court has brought this matter to the notice of A.A.G. 2 who was present in Court that the Government be advised that there ought to be end to controversies and not to make a habit in creating recurring controversies. The state administration in Bihar is already bogged with a mire of litigation with its staff and can ill afford to borrow more.

11. The circumstances of this case entitle the petitioner-appellant to special costs of Rs. 2,500/-. Her back wages and costs are to be paid within one month from today. .

12. In the result, the appeal is allowed with directions and costs as indicated above.

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