

Rampari Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Sep-21-2007

Judge : V.N. Sinha, J.

Appeal No. : Civil Writ Jurisdiction Case No. 5952 of 2005

Appellant : Rampari Devi

Respondent : The State of Bihar and ors.

Advocate for Def. : Shailendra Kumar Jha, J.C. to S.C.9

Advocate for Pet/Ap. : Pushkar Narain Shahi and Sanjay Kumar, Advs.

Disposition : Petition dismissed

Judgement :

V.N. Sinha, J.

1. Heard learned Counsel for the petitioner and the State.
2. Husband of the petitioner served as Executive Engineer in the Water Resources Department of the State Government. He was visited with two punishment orders dated 28.4.1989 and 17.8.1996, where under he was awarded punishment of stoppage of increments with cumulative effect, besides the entry of censure in the service record for the year 1989-90 and no salary beyond the subsistence

allowance during the period of suspension. Petitioner challenged the two punishment orders by filing C.W.J.C. No. 11845 of 1999 on 4.12.1999. Another Bench of this Court under orders dated 2.3.2005, passed in the said writ case, directed that the said writ case be confined to the orders dated 28.4.1989 with liberty to the petitioner to pursue his grievance with regard to the order dated 17.8.1996 in a separate proceeding.

3. The present writ application has been filed assailing the said order dated 17.8.1996, which is contained in Annexure-7 to this application, perusal whereof indicates that the husband of the petitioner was placed under suspension under order No. 161, bearing Memo. No. 6 dated 11.6.1991, Annexure-3 and departmental proceeding was initiated against him under the Resolution of the State Government, bearing No. 1548 dated 8.4.1992 where under charge sheet was served and Enquiry Officer appointed, who after considering the written defense of the husband of the petitioner as also materials produced by the Presenting Officer, submitted his enquiry report under letter, bearing No. 304 dated 11.3.1993, Annexure-4 to this application holding that husband of the petitioner may not be responsible for defalcation of the amount meant for the execution of the project, but he is certainly responsible for not maintaining the accounts including the account of the disposal of the cement entrusted to him for the execution of the different projects. Appreciating the contents of the enquiry report, petitioner has been punished under the impugned punishment order dated 17.8.1996, Annexure-7 to this application.

4. Learned Counsel for the petitioner has assailed the said order on the ground that once the Enquiry Officer recorded a finding that petitioner was not responsible for any defalcation of the amount meant for the project then without furnishing second show cause notice giving out reasons differing with the enquiry report, the authorities ought not to have passed the impugned punishment order and on the ground of failure to serve a second show cause notice alone, the impugned order be set aside. In support of such contention, learned Counsel has relied on the judgments rendered in the case of Yoginath D. Bagde v. State of Maharashtra and Anr. reported in : AIR 1999 SC3734 and in the case of Punjab National Bank and Ors. v. Kunj Behari Misra and Ors. analogous cases reported in :

(1998)IILLJ809SC .

5. Counsel for the State has opposed the prayer with reference to the findings of the Enquiry Officer recorded in the last paragraph of the enquiry report and submitted that the Enquiry Officer has categorically found that the husband of the petitioner failed to maintain the accounts in the manner it was required to be maintained as he did not debit and credit the accounts of the different projects, which were being executed under his supervision and with reference to such findings, he further submitted that the authorities have taken a lenient view of the matter and instead of dismissing the petitioner from service for not maintaining the account properly, has imposed the punishment of stoppage of five increments with cumulative effect and this Court should not interfere in the matter as petitioner himself assailed the impugned order dated 17.8.1996 belatedly when he filed the first writ petition, bearing C.W.J.C. No. 11845 of 1999 on 4.12.1999 that is after more than three years of the service of the said order on the husband of the petitioner.

6. Learned Counsel for the petitioner, in rejoinder, submitted that while passing the order dated 2.3.2005, passed in the aforesaid C.W.J.C. No. 11845 of 1999 permitting the petitioner to assail the impugned order dated 17.8.1996 separately, another Bench of this Court granted her liberty to pursue the grievance as regards the impugned order dated 17.8.1996 separately, thus, delay in filing the writ petition has already been condoned and the State respondents are not well advised to take objection about the delay in filing the first writ petition as also the present writ petition. In this connection, he further pointed out that the order having been passed without serving a second show cause notice giving reasons of difference from the findings recorded by the Enquiry Officer absolving the husband of the petitioner from the charge of defalcation tantamount to violation of the Principles of natural justice and in the circumstances, the illegality goes to the very root of the matter and this Court should intervene as since the service of the order, husband of the petitioner has been representing before the authorities but without any success. In support of such submission, learned Counsel for the petitioner has relied on judgment of the Hon'ble Supreme Court in the case of Mohan Prasad Singh & Tara Nand Kumar v. The State of Bihar and Ors. reported in 2000(2)

PLJR 187 and in the case of K. Thimmappa and Ors. v. Chairman, Central Board of Directors, State Bank of India and Anr. reported in (2001) 2 Supreme Court cases 259, paragraphs 8 and 9 and with reference to the judgment of the Hon'ble Supreme Court in the case of K. Thimmappa & Ors. (Supra), it is submitted that writ petition alleging violation of fundamental rights cannot be rejected on the ground of delay and laches.

7. Having heard counsel for the parties, I am of the view that the impugned order was passed on 17.8.1996 which the petitioner initially assailed by filing C.W.J.C. No. 11845 of 1999 on 4.12.1999 i.e. after more than three years and another Bench of this Court while passing the order dated 2.3.2005 in the earlier writ petition, only permitted the petitioner to pursue the grievance with regard to the impugned order by filing a separate writ petition, but while passing the said order, this Court did not restrain the respondents from taking the ground of delay, in the circumstances, in my opinion, the State respondents are well advised to take the ground of delay and laches on the part of the husband of the petitioner to challenge the said impugned order after more than three years, as in the present case petitioner has only alleged violation of service of second show cause notice incorporating the reasons of difference from the findings recorded in the enquiry report, which in my opinion, was not necessary in view of the findings of the Enquiry Officer contained in paragraph (Cha) of the enquiry report holding the husband of the petitioner responsible for not maintaining the accounts of the project, execution whereof he was supervising which necessarily made him responsible even for ensuring proper maintenance of the accounts. In this connection, I would refer to the judgment of the Hon'ble Supreme Court in the case of Jagdish Narain Maltiar v. The State of Bihar and Ors. reported in : (1973)ILLJ474SC . Perusal of paragraphs 7 and 8 of the said judgment would indicate that the writ petition of the petitioner of the said case against the termination order was dismissed by the High Court on the ground of delay and laches of three years and the Hon'ble Supreme Court did not set aside the dismissal order on the ground that during those three years, petitioner was pursuing his remedy by way of representations as in the opinion of the Hon'ble Supreme Court, if a litigant continues with representation, which is not authorized by any law then he is putting in peril his right to move the High Court in the

extraordinary writ jurisdiction as thereby he disables the High Court from exercising its extraordinary powers in his favour. In this connection, reference may also be made to the judgment of the Hon'ble Supreme Court in the case of *Rup Diamonds and Ors. v. Union of India and Ors.* reported in : 1989(40)ELT226(SC) , when the Hon'ble Court refused to interfere in the matter as there was an unexplained inordinate delay of only one year in preferring the writ petition, which was brought after almost a year of the first rejection. In this connection, I may also notice my order dated 9.8.2007, passed in C.W.J.C. No. 5613 of 2001, where under the said writ petition, which was filed on 27.4.2001 against the punishment order dated 28.4.1998, was also dismissed on the ground of delay and laches of three years.

8. Besides the ground of delay and laches, on merit also there does not appear to be any case for interference by this Court as from perusal of paragraph (Cha) of the findings of the Enquiry Officer itself, it will appear that husband of the petitioner failed to maintain the account of the project execution whereof he was supervising as was required to be maintained and appreciating such conduct of the husband of the petitioner, the authorities imposed the punishment of only stoppage of five increments with cumulative effect, censure, and payment of subsistence allowance during the period of suspension and this Court does not think it proper to interfere with the punishment as while executing the works, it is always incumbent upon the supervising authority i.e. the Executive Engineer not only to supervise the execution but he should also ensure maintenance of the account as it is required to be maintained.

9. In the result, this writ petition is dismissed.