

State of Bihar and ors. Vs. Daroga Prasad and ors.

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Court : Patna

Decided On : Nov-09-2001

Judge : S.K. Katriar, J.

Appeal No. : Civil Review No. 309 of 1999

Appellant : State of Bihar and ors.

Respondent : Daroga Prasad and ors.

Disposition : Application Allowed

Judgement :

S.K. Katriar, J.

1. The State of Bihar and its functionaries are the petitioners herein, were respondents in C.W.J.C. No. 8069 of 1997 (Daroga

Prasad v. State of Bihar and others), and have preferred this application for review of the order dated 28-7-1999 (Annexure-1), passed in the writ petition, whereby the order dated 10-8-1998 (Annexure-16 to the writ petition), along with the order dated 25-9-1998 (Annexure-19 to the writ petition] were quashed. The High Court in effect had set aside the order of the Accountant-General deducting from the post-retirement benefits of the writ petitioner the excess salary paid to him while in service.

2. The writ petitioner was in the service of the Bihar Government, was working as a Borer and was drawing the pay-scale of Rs. 825-1,200. He claimed entitlement to the pay-scale of Rs. 975-1,540, which was denied by the State Government. He along with two other persons had preferred C.W.J.C. No. 6631 of 1991

(Ramashray Singh and Ors. v. State of Bihar and Ors.), inter alia, for a direction to the State Government to pay to them the pay-scale of Rs. 975-1,540. The writ petitioner was petitioner No. 3 in that writ petition. The same was dismissed by a Division Bench of this Court by judgment dated 14-11-1995 (Annexure-6), inter alia, on the ground that the pay-scale of Rs. 975-1,540 was given to Tube-well Borers which entailed high responsibilities and was, therefore, inadmissible to the petitioners of that writ petition. It was held that they were entitled to the pay-scale admissible to Borers, i.e. Rs. 825-1,200. The writ petitioner superannuated from the services of the Bihar Government w.e.f. 28-2-1994. Thereafter, for reasons not clear in the present proceedings, letter dated 15-1-1998 was issued by the authorities showing entitlement of the writ petitioner to the pay-scale of Rs. 975-1,540. By the consequential order, he was granted the differential of salary. It appears from the pleadings of the parties that it was pointed out in the audit in the office of the Accountant General that the petitioner had drawn the differential of salary unauthorisedly. Therefore, the Accountant General issued the aforesaid letter dated 10-8-1998 (Annexure-16 to C.W.J.C. No. 8069/97), directing recovery of arrears. The functionaries of the State Government passed the aforesaid consequential order dated 25-9-1998 (Annexure-19 to C.W.J.C. No. 8069/97), informing the writ petitioner of the mode and manner of recovery of the same from the post-retirement benefits of the petitioner. The writ petitioner challenged these two orders in the said C.W.J.C. No. 8069 of 1997 which was allowed by order dated 28-7-1999 (Annexure-1) on two grounds, namely, once the pay-scale of the petitioner had been fixed, there was no justification

for the authorities to recover the same. It was allowed on the further ground that the writ petitioner had superannuated from the service of the Bihar Government w.e.f. 28-2-1994 and, therefore, the same should not have been recovered at that stage, much less without giving due opportunity to him. In that view of the matter, both the aforesaid orders dated 10-8-1998 and the consequential order dated 25-

9-1998 were quashed. The net result of the order of the High Court was that the respondent-authorities were precluded from recovering the excess salary paid to the writ petitioner.

3. It appears that after the said order dated 28-7-1999 of this Court was received in the department concerned, they realised that the writ petitioner had obtained the same by suppressing the fact that the question of petitioner's entitlement to the pay-scale of Rs. 975-1,540, really admissible to Tube-well Borers, had been rejected by this Court by the aforesaid judgment dated 14-11-1995, passed in C.W.J.C. No. 6631 of 1991. The State Government, therefore, preferred L.P.A. No. 1063 of 1999 (State of Bihar v. Daroga Prasad and Ors.), which was disposed of by order dated 17-9-1999 (Annexure-9), whereby the State Government was permitted to withdraw the appeal with the liberty to file a review petition before the learned Single Judge. Hence the present review petition at the instance of the State of Bihar and its functionaries.

4. While pressing this review application, Mr. Ashok Kumar Singh, learned S.C. 3, has taken me through the records of the case in chronological order and submits that the writ petitioner purposely and with a mala fide motive suppressed the fact in the writ petition that the question of his entitlement to the pay-scale of Rs. 975-1540 had been clearly rejected by the High Court in the earlier writ petition. In his submission, had he disclosed it, this Court would not have been misled into passing the order under review. He relies on the judgment of the Supreme court reported in : 2000 CriLJ1394 (Murray & Co. v. Ashok Kumar Newatia). He further submits that the writ petitioner is trying to create further confusion by change of Counsel in the writ petition and the present proceeding. He relies on Division Bench judgment of this Court reported in : AIR2001 Pat115 (Rotary Club, Begusarai v. State of Bihar) He lastly submits that such a blatant act of falsehood on the part of the writ petitioner deserves stern action otherwise there is no protection to the Court which has been led up the garden path, and the State Government and its functionaries have been equally misled.

5. Mr. Shri Nandan Singh, learned Counsel appearing for the writ petitioner, who is O.P. No. 1 before me, submits that the writ petition was allowed by the order under

review primarily on the ground that recovery was sought to be made without due opportunity to him. He further submits that the writ petitioner has in any case retired way back in March 1994, and that too on the ordinary post of Borer carrying the meagre pay-scale of

Rs. 825-1-200.

6. Having considered the rival submissions, I am of the view that this review application is fit to be allowed. It is manifest from the narration of facts set out hereinabove that the writ petitioner is guilty of suppression of material facts. As stated hereinabove, he was petitioner No. 3 in the earlier writ petition, namely,

C.W.J.C. No. 6631 of 1991, wherein the primary question for consideration was whether or not the writ petitioner along with two others were entitled to pay-scale of Rs. 975-1,540. After an exhaustive discussion of the duties and functions attached to the posts of Tube-well Borer and the Borer, the Division Bench had concluded that Tube-well Borers were discharging higher duties and responsibilities and were, therefore, entitled to the higher pay-scale of Rs. 975-1,540. Borers including those writ petitioners were, therefore, entitled to the pay-scale of Rs. 825-1,200. The order dated 10-8-1998 (Annexure-16 to the writ petition), issued by the Accountant-General, and the consequential order dated 25-9-1998 of the Executive Engineer, were really pursuant to the judgment of the Division Bench of this Court.

7. There was thus no occasion or justification at all to challenge these orders by preferring C.W.J.C. No. 8069 of 1997. Learned Counsel for the writ petitioner is, therefore, not right in his submission before me that this writ petition was based on the sole ground that the excess payment of salary was sought to be recovered without due opportunity to him. The relevant portion of the order is set out hereinbelow for the facility of quick reference: There is no counter-affidavit on behalf of the Accountant General to justify when the concerned department had already fixed the scale and other emoluments. Was there any provision to change the same without any opportunity to the petitioner? It further appears that the petitioner retired from service on 28-2-1994 and all such payments were made to him during the service. It cannot be justified at this stage to make recovery without

any due opportunity to him....

(Emphasis mine)

It is thus manifest from a plain reading of the order that the writ petition was allowed, not on the sole ground of deprivation of due opportunity to the writ petitioner, but also on the ground of absence of justification on the part of the authorities to do so. As found hereinabove, the justification for recovery was the direction in the aforesaid judgment in C.W.J.C. No. 6631 of 1991. Furthermore, Paragraph 26 of the writ petition reads as follows:

26. That the petitioner has not filed any application like the present one earlier before this Hon'ble Court.

The writ petitioner had himself subscribed to the affidavit of this writ petition on 26-8-1997. The writ petitioner is thus guilty of obtaining orders of this Court by suppression of material facts which, if disclosed, would have resulted in dismissal of the writ petition as is happening by the present order. I am thus in no doubt that the writ petitioner was duty bound to disclose in his writ petition, the result of the earlier writ petition which he purposely and with mala fide motive refused to do, obviously to gain success in the writ petition and prevent recovery of arrears of excess payment of salary. Therefore, the order dated 28-7-1999 (Annexure-1), passed in C.W.J.C. No. 8069 of 1997, is hereby recalled, and the writ petition is dismissed. Consequently, the aforesaid order dated 10-8-1998 (Annexure-16), and the order dated 25-9-1998 (Annexure-19), are automatically revived.

8. This takes me on to the next aspect of the matter, namely, the steps that ought to be taken against the writ petitioner pursuant to the present judgment, Learned Standing Counsel has rightly relied on the judgment of the Supreme Court in *Murray &*

Co. v. Ashok Kumar Newatia (supra) paragraph 24 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference:

24. While it is true that the contextual facts do not depict of drawing any advantage or even any attempt to gain any advantage through the statement as made in the

affidavit noted hereinbefore, but there is no dispute as such on the factum of a false and fabricated statement finding its place in the affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such, Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. The learned Advocate appearing for the respondent made a frantic bid to content that the statement has been made without relising the purport of the same. We are, however, not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere denial of fact but a positive assertion and as such made with the definite intent to pass off a falsity and if possible to gain advantage. This practice of having a false statement incorporated in an affidavit filed before a Court should always be deprecated and we do hereby record the same. The fact that the deponent has, in fact, affirmed a false affidavit before this Court is rather serious in nature and he thereby rendered himself guilty of contempt of this Court as noticed hereinbefore. This Court, in our view, would be failing in its duties, if the matter in question is not dealt with in a manner proper and

effective for maintenance of the majesty of Courts as otherwise the law Courts would lose their

efficacy to the litigant public. It is in this perspective that we do feel it expedient to record that mere tendering of unconditional apology to this Court would not exonerate the

contemnor in the contextual facts but having regard to the nature of the act of contempt, we do deem it fit to impose a fine of Rs. 2,500 each so as to subserve the ends of justice against the respondent contemnors in default of payment of which they (each of them) will suffer simple imprisonment for one month. The fine be realised within a period of four weeks from the date of this order and shall be paid to the Legal Service Authority of this Court the Supreme Court Legal Service Committee.

I must sound a note of caution that the Supreme Court had passed the aforesaid judgment on a contempt petition, but the core issue therein as well as in the present proceeding is just the same, namely, the action which ought to be taken

against the person who misleads the Court into passing wrong orders by suppression of material facts or the like. The writ petitioner, as the contemner before the Supreme Court, is guilty of a deliberate act which cannot just be ignored. The declaration by the writ petitioner in paragraph 26 of the writ petition that he had not previously filed the writ petition was positive assertion of a fact in an affidavit known to be false cannot just be ignored. Learned Counsel for the writ petitioner before me, as the learned Counsel for the contemner before the Supreme Court, made a frantic bid to content that the statement had been made without realising the purport of the same. If such deliberate and calculated acts are made by the parties before the Court to obtain incorrect orders by taking the Court up the

garden path, there is no protection to the Court. If left unpunished, confidence of the litigant public in the Court would be shaken and the very credibility of the Court as dispenser of justice between man and man, and man and the State, shall be eroded. The writ petitioner is further guilty of another indiscretion, though of a smaller nature. There has been a change of Counsel on his part in the present proceedings. The Division Bench of this Court in *Rotary Club v. State of Bihar* (supra) has deprecated such a practice on the part of the parties seeking review of an earlier order of the Court by change of Counsel. It cannot be over emphasised that continuity of Counsel is surely beneficial to the parties, and is also in the interest of administration of justice. We do not appreciate the act on the part of the writ petitioner in changing the Counsel in the present proceedings. We, therefore, record our displeasure against the writ petitioner for such an act of indiscretion which is another poor attempt to deflect the course of justice.

9. In view of the foregoing discussion, I am of the view that the facts and circumstances of the present case call for stern action against the petitioner. We are mindful of the position that the writ petitioner has superannuated from service w.e.f. 1st March, 1994. Instead of being a defence, this factor, in view of our judicial experience and on the basis of the pattern of litigation in this Court, calls for stern action. A feeling seems to have developed among the employees of the State Government in this State that they are free to resort to any illegal act when their retirement from service is round the corner, they would be beyond the

Government control after their retirement and also perhaps beyond the reach of law. I am glad to note that the State Government and its functionaries have belied the hopes of the writ petitioner and have shown the required vigilance in the present case, and the arms of law are long enough to reach him at the present stage also. In that view of the matter, the petitioners and OP No. 2 (the Accountant-General) shall recover the excess payment of salary with interest at the rate of 10% from the date the amounts had been paid to the writ petitioner. Rule 43(a) of the Bihar Pension Rules 1950 lays down that further good conduct is an implied condition of every grant of pension. Rule 139 enables the State Government to reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities. I hereby direct the State Government and its functionaries to initiate proceedings under Rule 43(a) and/or Rule 139 and/or any other cognate provision of law for revising the pension of the writ petitioner. In view of the foregoing, I have refrained from directing initiation of prosecution of the writ petitioner.

10. In the result, this review application is hereby allowed. The order under review, namely, the order dated 28-7-1999 (Annexure-1), passed by a learned Single Judge of this Court in C.W.J.C. No. 8069 of 1997 (Daroga Prasad v. State of Bihar), is hereby recalled, and the writ petition is dismissed with the aforesaid directions.