Shail Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Dec-04-2006

Judge : Ramesh Kumar Datta, J.

Appellant : Shail Devi

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Mr. Mukeshwar Dayal

Disposition : Application dismissed

Judgement :

Ramesh Kumar Datta, J.

1. Heard Mr. Mukeshwar Dayal, learned Counsel for the petitioner, Mr. Sanjay Kumar, learned Counsel appearing for the authorities of the District Central Co-oparative Bank, Hajipur, respondent Nos. 2 and 3 and Mr. Additional Advocate General No. III, for the State.

2. The petitioner seeks a direction upon the respondents to make payment of salary due to her late husband from 1.4.1999 to 6.8.2003.

3. The case of the petitioner is that her late husband, Shiv Shankar Sah was working as a Paid Manager in Primary Agriculture Credit Society (PACS), Khanjaha Chak and his last posting was in Lalganj Block. The grievance of the

petitioner is that her husband was not paid salary from 1.4.1999 to 6.8.2003 without any rhyme and reason and ultimately he died in harness on 7.8.2003. The petitioner filed representation before various authorities including the Managing Director, Vaishali District Central Co-operative Bank but no action has been taken by the authorities.

4. Learned Counsel for the petitioner relies upon a decision of this Court in the case of Bihar Rajya Sahkarita Prabandhak Sangh and Ors. v. The State of Bihar and Ors. 1999 (3) PLJR 110 in which this Court had directed that the pay of the petitioners (Paid Managers) should include dearness allowance which is given to the State Government employees in respect of pay scale of Rs. 975-1540. The petitioner also relies upon the observations of this Court that the Co-operative. Societies virtually act as an extended arm of the State. The petitioner further relies upon another decision of this Court in the case of Awadh Kishore Sharma v. Shri Chandra Mohan Jha, Agriculture Production Commissioner and Ors. 1995 (2) PLJR 632 in which certain observations are made in para 30 that the employer must pay living wages to the employees. He also relies upon a statement made in para-13 of the counter affidavit of the State in which it is stated that the State has no role in deciding the matter but directions are being issued to the Managing Director-cum-Member Secretary to do the needful. It is submitted by the learned Counsel that it is the duty of the Managing Director to pay the salary due to the petitioner's husband. Learned Counsel for the petitioner further relies, upon Section 66B of the Bihar Co-operative Societies Act, 1935 stating that by the said provisions complete control and supervision of the State Government has been provided over the Co-operative Societies and thus it is a liability of the State to make payment of salary of the petitioner's husband.

5. Learned Additional Advocate General No. 3 appealing for the State however, strongly opposed the said stand of the petitioner and relying upon the factual statements made in the counter affidavit submitted that the Co-operative Societies are independent institutions registered under the Co-operative Societies Act and there is nothing in Section 668 of the Act by which any liability can be fastened on the State Government with respect to the functioning of such societies including payment of salary to the employees of such societies. In this regard, learned

Additional Advocate General pointed but that the said section clearly empowers the State Government to prescribe qualifications, emoluments and other service conditions with respect to the personnel of the Co-operative Societies and by no stretch of imagination it can be said that such power to prescribe such things amounts to complete day to day control (sic) functioning of the Co-operative societies by the State Government. It is submitted that the same is merely to ensure that the Co-operative Societies do not over staff themselves or pay salary and emoluments which are beyond the capacity of the society. A part from the same it is for the Co-operative society to generate their own resources for the payment of salary to their members.

6. Learned Counsel for the District Central Co-operative Bank relied upon the Modal Byelaws for the District Cadre Co-operative Societies to which the petitioner's husband belonged. He has also referred to a letter No. 3507 dated 28.12.1993, Annexure -A to the counter affidavit filed on behalf of respondent No. 2 issued by the Co-operative Department, Government of Bihar in which modalities for payment of salary to the Paid Manager have been laid down. In the said circular, it is provided that each PACS shall open a Saving Bank Account in the concerned Branch of the District Central Co-operative Bank to be known as Account No. 1 to be jointly operated by the Managing Director of the Bank and a nominee of the society. In the said account the society shall deposit 1.25% and the Bank will deposit 0 75% from short term loan distributed as the respective contribution in the Central Co-operative Bank. Similarly the Central Co-operative Bank shall also make a contribution of 0.3% of the short term loan amount for distribution. It is further provided that the society shall deposit its contribution from out of the amounts realised from the members only. It is thus submitted by the learned Counsel on the basis of the said provisions that the salaries of the Paid Manager can only be paid within the funds and there is no other fund available for payment of salaries to them and it is not the liability of the District Central Co-operative Bank to make payment of such salary with its own funds. It is further submitted by the learned Counsel that on account of non-payment of salaries to the paid Managers of the PACS, C.W.J.C. No. 6654 of 2001 was filed by Bihar Rajya Sahkarita Prabandhak Sewa Sangh & Ors. and two other writ petitions were also filed by the paid Managers which have been disposed of by order dated

15.1.2003 of this Court. In the said case the stand taken by the Bihar State Co-operative Bank, Central Co-operative lank Ltd. was that payment of salary is not being made to the Paid managers on account of insufficiency of fund for which they themselves are responsible and payment can only be made in case the State Government grants subsidy in turn the stand of the State government was that it is not in a position to grant subsidy to make the entire payment of the salary of the Paid Managers and in fact, some subsidy is given for that purpose. It was also the stand that the situation has arisen on account of the Paid Managers not making collection.

7. On consideration of the said facts and circumstances, this Court observed that in view of the fact that there is no fund for making payment to the Paid Managers, no positive direction can be given. However, the various respondent-authorities were directed to address the problems faced by the Managers of the PACS in consultation with them and devise ways and means to over come the difficulty faced by them. Pursuant to the same a meeting was held in which the representatives of the respondents and the Paid Managers participated and on the basis of the same letter No. 4414 dated 12.9.2003 was issued under the signature of the Secretary, Co-operative Department in which without interfering with the existing system of contribution for the purpose of payment of salary it was directed that 60% of the profit-made by the concerned PACS can also be utilised for the purpose of payment of salary.

8. Learned Counsel for the Co-operative Bank has also relied upon the statements made in para-15 of the counter affidavit in which it is stated that the husband of the petitioner was posted at Chatwara PACS for financing and recovery of loan but nothing was recovered by her husband as a result of which the cadre fund was badly affected due to non-business activities of the husband of the petitioner. It is further stated that in spite of poor business of the husband of the petitioner, the authorities have paid Rs. 22,500/- to the husband of the petitioner till 12.8.2003 from the subsidy granted from time to time by the State Government to the cadre fund and therefore, the husband of the petitioner was himself responsible for non-payment of his salary. So far as the said statements are concerned, they have not been denied by the petitioner with specific statement rather it is stated that no

adverse remark was communicated to the husband of the petitioner nor any departmental proceeding was initiated nor any document has been annexed regarding unsatisfactory service of the petitioner's husband.

9. This Court fails to understand as to what document is required to be annexed for the purpose of saying that nothing was recovered by the husband of the petitioner. The said statement has not been countered to show as to what amounts have been recovered by the husband of the petitioner during the period in question. The husband of the petitioner could himself have approached this Court by giving various facts and figures to show that he was entitled to payment of salary in view of the collections made by him during the long period of four and half years in which he was denied the payment of his salary but evidently knowing the situation he did not choose to do so and only in the year 2005 his widow has approached this Court.

10. So far as the reliance by the counsel for the petitioner on the said judgments is concerned, the judgment in Bihar Rajya Sahkarita Prabandhak Sangh's case only lays down that in the salary structure of the Paid Managers dearness allowance must also form part of the pay scale and allowances. The said judgment does not at all concern the question of payment of those salaries and liability of the various authorities which have been arraigned in the Court in the present matter. So far as the other decisions are concerned, only general observations have been made therein and there is nothing to support the case of the petitioner.

11. In view of the decision of this Court dated 15.1.2001 passed in Bihar Rajya Sahkarita Prabandhak Sewa Sangh's case it is evident that in the absence of any fund in order to make payment of salary to the Paid Managers, no positive direction can be given for such payment. Any payment can only be made in accordance with the scheme of payment envisaged which substantially depends upon the performance of the Paid Managers of the PACS themselves depending upon the amount of collection made by them. So far as the subsidy of the State Government is concerned, the stand in the counter affidavit of the respondent is that the amount due to the petitioner's husband from the same has already been paid.

12. In the aforesaid facts and circumstances, this writ application has no merit and is accordingly dismissed.

13. However, it will be open to the petitioner to approach the respondent-authorities with specific facts and figures and on her doing so, the authorities will look into the matter and if any payment is found due on account of service rendered by her late husband, the same must also be paid to her expeditiously.