

The State of Bihar and anr Vs. Prabhakar Pandey and anr

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Court : Patna

Decided On : May-19-2012

Appellant : The State of Bihar and anr

Respondent : Prabhakar Pandey and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Letters Patent Appeal
No.1782 of 2011 In Miscellaneous Jurisdiction Case No. 2405 of 2008 In Civil Writ
Jurisdiction Case No. 13438 of 2000
===== 1. The
State Of Bihar.

2. Sri Palat Mehra, The Chief Town Planner, Urban, Development Department,
Government Of Bihar, Vikas Bhawan, New Secretariat, Patna. Appellants
Versus 1. Prabhakar Pandey, Son of late Keshava Pandey, resident of Village-
Gauripundah, P.S. Fathua, District- Patna.

2. Sri Anupam Kumar Suman, the Managing Director, Bihar State Housing Board,
6 Mangles Road, Patna. Respondents
=====

Appearance : For the Appellants : Mr. Piyush Lall, A.C. to A.A.G.-1 For the
respondentNo.1 : Mr. Shailendra Kumar Sinha, Advocatge & Mr. Raj Kumar,
Advocate For the respondent No.2: Mrs. Nilu Agrawal, Advocate & Mr. Krishna
Murari, Advocate.

===== CORAM:

HONOURABLE THE CHIEF JUSTICE and HONOURABLE MR. JUSTICE
BIRENDRA PRASAD VERMA ORAL ORDER (Per: HONOURABLE THE CHIEF
JUSTICE

19. 01-2012 With the consent of the learned Advocates for the parties, the matter is heard and decided today. Feeling aggrieved by the judgment dated 12th January 2011 passed by the learned Single Judge in above M.J.C. No. 2405 of 2008, the respondent State of Bihar has preferred this Letters Patent Appeal under Clause 10 of the Letters patent. The respondent No.1, an employee of the State Patna High Court LPA No.1782 of 2011 (4) dt.19-01-2012 2 Government, was transferred on deputation to the Bihar State Housing Board, the respondent no.2. The respondent No.1 filed a writ petition being CWJC No.13438 of 2000 to claim certain service benefits. The Court (Coram: Mr. Justice S.K.Katriar), by the judgment and order dated 19th January 2007, allowed the said petition and issued certain directions to the State Government. Apart from the said directions, the Court also directed the State Government to reconsider the petitioners case for grant of revised pay scale/ replacement pay scale and dispose of the same by a reasoned order. It appears that pursuant to the aforesaid directions, the respondent no.1 made representation for grant of revised pay scale of Rs. 5500-9000 with effect from 1.1.1996. The said representation was rejected on 13th June 2007. Feeling aggrieved, the respondent no.1 filed MJC No. 2405 of 2008 under Article 215 of the Constitution of India. According to the respondent no.1, the State Government had failed to comply with the directions issued in CWJC No. 13438 of 2000 and had thus committed contempt of the Court. The said petition was contested by the State Government. The State Government filed a counter affidavit justifying the order dated 13th June, 2007. The aforesaid MJC No. 2405 of 2008 was heard by the learned Single Judge. The learned Single Judge, without considering whether the State Government had committed contempt of the Court, proceeded to decide the issue on merits. Having considered the merits of the claim, the learned Single Judge held that the respondent no.1 was entitled to pay scale of Rs. 1400-2300 with effect from 1st January 1986 and replacement pay scale of Rs. 5500-9000 with effect from 1st January 1996. The learned Single Judge further directed that the respondent No.1 be Patna High Court LPA No.1782 of 2011 (4) dt.19-01-2012 3 paid the differential amount of salary, revised post

retirement benefits and the interest at the rate of 6% from the date the amount became due till the date of payment. Feeling aggrieved, the State of Bihar has preferred this Appeal. Learned Advocate Mr. Piyush Lall has appeared for the appellants. He has submitted that under the guise of contempt of the Court, the respondent No.1 ventilated the substantive grievance against the orders dated 13th June 2007 and 27th June 2007. The learned Single Judge exercising jurisdiction under Article 215 of the Constitution has erred in expanding the scope of enquiry and in deciding the issue on merits. Mr. Piyush Lall has, in support of his submission, relied upon the judgment of the Honble Supreme Court in the matter of J.S. Parihar Vs. Ganpat Duggar and others(AIR 199.S C 113). In the said matter the Honble Supreme Court held, It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re- exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Learned Advocate Mr.Shailendra Kumar Sinha has appeared for the respondent no.1. He has contested the Appeal. He Patna High Court LPA No.1782 of 2011 (4) dt.19-01-2012 4 has strenuously urged that the learned Single Judge did not adjudicate the disputed matter. Learned Single Judge has reiterated the decision rendered in the writ petition. We are unable to agree with Mr. Shailendra Kumar Sinha. Indisputably, the learned Single Judge was exercising power under Article 215 of the Constitution. The learned Single Judge has not made enquiry whether the appellants had committed contempt of the Court. Instead, the learned single Judge has proceeded to consider the decision dated 13th June 2007 on merits. Without the express terminology, in effect the said order dated 13th June 2007 has been set aside and a direction in the nature of mandamus has been issued. In our opinion, the exercise undertaken by the learned Single Judge was beyond the

scope of Article 215 of the Constitution. If the respondent no.1 were aggrieved by order dated 13th June 2007, the remedy lay in a substantive proceeding before appropriate forum. For the aforesaid reasons, this Appeal is allowed. The impugned judgment and order dated 12th January 2011 passed in MJC No. 2405 of 2008 is set aside. MJC No. 2405 of 2008 is rejected. We clarify that we have not examined the order dated 13th June 2007 or order dated 27th June 2007 on merits. If at all, the respondent no.1 is aggrieved by the said orders, the respondent no.1 will be at liberty to avail of the substantive remedy in the subject matter, before appropriate forum. (R.M. Doshit, CJ) Kanth/- (Birendra Prasad Verma, J)

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