

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1198 OF 2015

CHAIRMAN, BIHAR STATE POLLUTION
CONTROL BOARD & ANR.

APPELLANT(S)

VERSUS

NAGESHWAR DAS & ORS.

RESPONDENT(S)

O R D E R

The appellant before us is the Bihar State Pollution Control Board¹, which has challenged the order dated 08.12.2011 passed by the Division Bench of the High Court of Jharkhand at Ranchi² confirming the order dated 18.06.2003 passed by the learned Single Judge of that High Court, whereby certain benefits of service were granted to private respondent no. 1 - Nageshwar Das.

All the same, before we come to the merits of the case, the key question, such as the very jurisdiction of the Jharkhand High Court to decide the *lis*, must be dealt with first as we have serious doubts whether the 'dispute' was within the jurisdiction of the Jharkhand High Court.

Respondent no. 1 - Nageshwar Das was appointed as an Assistant in the BSPCB on 12.11.1979. Subsequently, he was promoted to the post of Section Officer and transferred to Dhanbad, which was a part of the State of Bihar at the relevant time. He was later

1 For short, "BSPCB"

2 For short, "Jharkhand High Court"

transferred to the Office at Patna. He was, however, stationed at Dhanbad again at the relevant time as a Section Officer.

In the year 1995, disciplinary proceedings were initiated against respondent no. 1. The chargesheet dated 22.08.1995 was handed over to respondent no. 1 on 23.08.1995, and the disciplinary proceedings were initiated. He had already been suspended from service on 22.08.1995 in contemplation of disciplinary proceedings. Consequent to the disciplinary proceedings, he was discharged from service on 01.06.1996. The order of his discharge/termination was challenged by respondent no. 1 before a learned single Judge of the High Court of Judicature at Patna³ in C.W.J.C. no. 6025/1996, which was disposed of on 10.12.1997 with the liberty to respondent no. 1 to file an appeal before the BSPCB, as an objection was raised that respondent had an alternative remedy available to him. Since his appeal was not taken up by the BSPCB, he filed a Letters Patent Appeal⁴ (against the order of the learned Single Judge), before the Division Bench of the Patna High Court, which was decided on 09.03.1998 with liberty to respondent no. 1 to file a review petition before the learned single Judge. The review petition before the learned single Judge met with the same fate, as it resulted in dismissal on 24.04.1998. Respondent no. 1 again preferred an LPA before the Patna High Court, challenging the order passed by the learned single Judge in the review petition. The LPA was, however, dismissed on 11.11.1998.

3 For short, "Patna High Court"

4 For short, "LPA"

Meanwhile, the BSPCB had entertained the appeal earlier filed by respondent no. 1, although this too did not find favour with BSPCB and was dismissed as time-barred on 11.04.1998. The order of 11.04.1998 was never challenged by respondent no. 1 till the new State of Jharkhand was created by an Act of Parliament (The Bihar Reorganisation Act, 2000) on 15.11.2000.

Respondent no.1 then filed a writ petition before the newly created Jharkhand High Court in the year 2002. On 18.06.2003, the writ petition was allowed and directions were given for the reinstatement of respondent no.1, without clarifying though as to which Pollution Control Board should reinstate him, as, by this time Bihar State had been reorganised into the present State of Bihar and the newly created State of Jharkhand, and each of the two States had its own Pollution Control Board. The petitioner submitted his joining before the newly created Jharkhand State Pollution Control Board, but the joining was not accepted on the ground that he was an employee of the Bihar Board. The joining of the petitioner having not been accepted, he preferred a contempt application alleging wilful violation of the Court's order.

The Contempt Petition was disposed of with the following order dated 30.04.2004 :

“To give effect to the Court’s order the Bihar Board issued a formal order accepting the joining of the petitioner. The counsel for the Bihar Board submitted that the services of all the employees posted within the territory of Jharkhand having been taken over by the Jharkhand Board, the said Board should also take over the services of petitioner.

Mr. Jerath, learned counsel for the Jharkhand Board submitted that the Jharkhand Board has no objection to take over the services of petitioner like other employees if the paragraphs 10 and 12 of the

judgment dated 18th June, 2003 passed in W.P. (S) No. 151 of 2002, as quoted above, is clarified and Jharkhand Board is allowed to take disciplinary action. It was also informed that the Jharkhand Board has formally accepted the joining of petitioner his services having placed under the Jharkhand Board and appropriate order of posting will be issued on an early date.

In the facts and circumstances while this Court is not inclined to proceed against any of the opposite parties, pass the following order:

- (a) The Bihar Board will send back the service records of petitioner to the Jharkhand Board. The Jharkhand Board in its turn may proceed against petitioner in accordance with law.
- (b) In the departmental proceeding if the petitioner is exonerated and it is decided to pay back wages to the petitioner it will be paid in the following manner:
 - (i) Bihar Board will pay the arrears from the date of discharge till the date of formation of Jharkhand Board.
 - (ii) Jharkhand Board will pay the salary for the period from the date of its formation (9th September, 2001) till the date of reinstatement of petitioner (date of judgment).
- (c) So far as the salary from the date of reinstatement (date of judgment) till the acceptance of joining is concerned, Jharkhand Board shall pay the salary.
- (d) The current salary shall be paid by Jharkhand Board in accordance with law, irrespective the decision in the departmental proceeding.
The aforesaid direction and clarification made subject to decision of this Court in L.P.A. 472 of 2003."

On the strength of the orders passed in the contempt petition, the Jharkhand State Pollution Control Board⁵ ultimately reinstated respondent no. 1 in service with effect from 09.03.2007 and since then, he was continuously drawing the salary of Section

5 For short, "JSPCB"

Officer. In the year 2018, upon reaching the age of superannuation, respondent no. 1 retired from service.

Meanwhile, against the order dated 18.06.2003 of the learned single Judge, the BSPCB had filed an LPA before the Division Bench of the Jharkhand High Court. The Division Bench dismissed the same by the impugned order dated 08.12.2011. The said order is reproduced below: -

"By impugned order dated 18th June, 2003, the writ petition of the writ petitioner has been allowed and it has been specifically ordered that "in effect, the petitioner stands reinstated in the services of the Board. However, the case is remitted to the Respondent Board to take a fresh decision, in accordance with law taking into consideration the report submitted by the Enquiry Officer and the question raised by the petitioner in the present case."

2. It is submitted by learned counsel for the parties that after the order of this Court, for fresh decision, the Chairman of the Board has dropped the proceeding against the writ petitioner-respondent.

3. Learned counsel for the appellants submitted that subsequently passed order by the Chairman is absolutely illegal in view of even impugned order as the impugned order was set aside on the ground that Chairman had no jurisdiction to pass the order and the order could have been passed by the Board. It is submitted that in view of the above the subsequently passed order by the Chairman is illegal.

4. Be that as it may be, if argument of the learned counsel for the appellants is accepted then there cannot be any merit in the L.P.A. because that stand of the appellants will amount to admitting the legal issue that the Chairman has no jurisdiction to pass the order which has been set aside by impugned order dated 18.6.2003. However, the appellants wants to take benefit of the same order which appellants wants to challenge in L.P.A.

5. At this juncture, it will be worthwhile to mention here that order against the respondent-employee was set aside and he has been reinstated and admittedly he is in service after passing of the impugned order and presently nobody has challenged the subsequent order passed by the Chairman dated 9.8.2007, either the appellants or by the State of Jharkhand and we are not concerned with that order and that order is not the subject matter of the L.P.A. In view of the reinstatement of the appellant and in view of the fact that presently even in the light of the order passed by the Chairman, no enquiry is pending against the petitioner, we do not find any reason to keep this L.P.A. pending where the management itself has right or wrongly decided to take against the respondent-employee. Therefore, this L.P.A. has, in fact, become infructuous.

6. Hence, this L.P.A. is dismissed having become infructuous."

The net result of the above two orders would be that respondent no. 1 was reinstated in service and continued to draw the salary till his superannuation in the year 2018.

There is one crucial aspect, which was not considered by the High Court and which goes to the root of the matter, which is the very jurisdiction of the Jharkhand High Court in entertaining the writ petition and LPA, as, in our considered opinion, the Jharkhand High Court had no jurisdiction in the matter. Secondly, in any case, the matter had already been decided by the Patna High Court and if respondent no. 1 had any remedy available, it was to file a special leave petition before this Court, which was never done.

The respondent was an employee in the service of the BSPCB when there was no State of Jharkhand or even the JSPCB. The disciplinary proceedings against respondent no. 1 were initiated in

the 1990s, which ultimately culminated in the discharge/termination of his services in the year 1996. Till then again, there was no State of Jharkhand or the JSPCB. Not only this, respondent no. 1 had challenged the order of discharge/termination dated 01.06.1996 before authorities, and the courts in Bihar, including the High Court, which was the correct approach. Now, merely because the new State of Jharkhand was formed subsequently in the year 2000 and respondent no. 1 was stationed in some part (Dhanbad) of the newly created State of Jharkhand at the time of his discharge, it would not give jurisdiction to the Jharkhand High Court to entertain a matter, which had not only been decided and thus there was *res judicata* operating in the facts of the present case, but there was a total lack of jurisdiction in the Jharkhand High Court since no cause of action arose in the State of Jharkhand, after its formation. Respondent no. 1 was not and had never been an employee of the JSPCB. In fact, till his services were terminated, there was no JSPCB or for that matter the State of Jharkhand.

Consequently, we have no hesitation to hold that the dispute initiated at the hands of respondent no. 1 in Jharkhand lacks jurisdiction and therefore, the order dated 18.06.2003 passed by the learned single Judge of the Jharkhand High Court and the order dated 08.12.2011 passed by the Division Bench of the Jharkhand High Court are liable to be set aside and the same are hereby set aside.

Having made the aforesaid determination regarding lack of jurisdiction on the part of the Jharkhand High Court, we have been informed that subsequent to the order passed in the contempt petition on 30.04.2004, the JSPCB had reinstated the respondent no.

1 in service and he had been getting salary since then. Since it will cause hardship to respondent no. 1 in repayment of the salary already drawn by him from the JSPCB, which in any case, has been done by the orders of the Jharkhand High Court, we direct the JSPCB not to recover the same from respondent no. 1.

In the interest of justice and to avoid confusion in the minds of the authorities, we also set aside the order dated 30.04.2004 passed by the learned single Judge of the Jharkhand High Court in Contempt Case (Civil) No. 554/2003.

Recording the aforesaid, the appeal is disposed of.

Pending application(s), if any, shall stand disposed of.

.....J.
(SUDHANSHU DHULIA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
JANUARY 10, 2024.

ITEM NO.107

COURT NO.17

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCIVIL APPEAL NO. 1198 OF 2015CHAIRMAN, BIHAR STATE POLLUTION
CONTROL BOARD & ANR.

APPELLANT(S)

VERSUS

NAGESHWAR DAS & ORS.

RESPONDENT(S)

Date : 10-01-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE SANJAY KUMAR

For Appellant(s)

Mr. Rudreshwar Singh, Adv.
Mrs. Divya Singh, Adv.
Mr. Gautam Singh, Adv.
Ms. Isha Singh, Adv.
Mr. Kaushik Poddar, AOR
Mr. Kumar Saurav, Adv.

For Respondent(s)

Mr. Manish Kumar Saran, AOR
Mr. Satya Prakash Sharan, Adv.
Ms. Ananya Tyagi, Adv.Mr. Jayesh Gaurav, Adv.
Mr. Ishwar Chand Rai, Adv.
Mrs. Diksha Ojha, Adv.
Mr. Farrukh Rasheed, AOR

Mr. Anil K. Jha, AOR

Mr. Rajiv Shankar Dwivedi, Adv.
Mr. Jayant Mohan, AOR
Mr. Manoj Kumar, Adv.
Ms. Adya Shree Dutta, Adv.Mr. Abhinav Mukerji, AOR
Ms. Pratishtha Vij, Adv.
Mrs. Bihu Sharma, Adv.
Mr. Raghav Bhatia, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(signed order is placed on the file)