

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1045 of 2014

IN

C. REV. 56 of 2013

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1. Renu Kumari, W/o Satendra Narain Singh, Resident of Village- Pawapuri, P.S. Deep Nagar, District- Nalanda, Presently posted as Assistant teacher in Bankatesh Sanskrit Primary-cum-High School, Raja Bazar, P.S. Jehanabad, District- Jehanabad

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
3. The Special Director Secondary Education), Bihar, Patna
4. The Chairman, Bihar Sanskrit Education Board, Boring Canal Road, Patna
5. The Secretary, Bihar Sanskrit Shiksha Board, Boring Canal Road, Patna
6. The District Education Officer, Jehanabad

.... Respondent/s

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Appearance :

For the Appellant/s : M/S Srivastava & Binod Kumar
For the Respondent/s : Mr. Mrigendra Kumar, A.C. to G.A.11
For the Sanskrit Shiksha Board: Mr. Satyam Shivam Sundaram

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-07-2015

This is an unfortunate case in which, a Sanskrit teacher has been put to hardship and unnecessary litigation, for no fault of her. The appellant herein was functioning as Assistant Teacher in Bankatesh Sanskrit Primary-cum-High School, Raja Bazar, Jehanabad. Complaining that she has not been paid salary despite the fact that the School was recognized, the appellant filed C.W.J.C.No. 9851 of 2009. She claimed relief, mostly against the Department of Education, Government of Bihar.



2. A counter-affidavit was filed by the State, pleading that the sanction has been accorded for payment of salary and the clearance from the Finance Department is awaited. During the pendency of the writ petition, it has been brought to the notice of the Court that the Finance Department has given concurrence. Taking note of that fact, the learned single Judge allowed the writ petition, through the order dated 30th August, 2011. The State did not prefer any appeal against that order.

3. The appellant filed a contempt case, alleging that the direction issued by this Court was not complied with. At that stage, this petition was filed with a prayer to review the order passed in the writ petition. The only plea raised was that the second supplementary counter-affidavit filed by 3rd respondent in the writ petition was not taken note of by the learned single Judge, when the writ petition was allowed. Since the learned single Judge, who passed the order dated 30-8-2011, retired by the time the review petition was taken up, it was heard by another learned Judge. By accepting the contention of the respondents that the second supplementary counter-affidavit was not taken into account, the review was allowed, and the order dated 30-8-2011 passed in the writ petition was recalled. Ever since then the State has stopped payment of salary to the appellant. Hence this L.P.A.

4. Heard learned counsel for the appellant and learned

counsel for the respondents.

5. Virtually there was no contest in the writ petition. It has been categorically mentioned by the State that sanction has been accorded for payment of salary to the appellant, and non-payment was only on account of delay in obtaining concurrence from the Finance Department. Fortunately for the appellant, the concurrence was also given by the Finance Department during the pendency of the writ petition. The learned single Judge allowed the writ petition taking into account, those developments.

6. In the review, the only ground pleaded by the State was that the second supplementary counter-affidavit filed by the 3rd respondent was not taken into account. It is rather curious that one employee of the Government has taken the stand contrary to what was stated in another counter-affidavit. It was not in dispute that the proceedings were issued by the Government and the Finance Department has also given its concurrence. If there was any illegality in those proceedings, the Government itself would have recalled those orders. An employee in the Department, by name Dasrath Ram, was instrumental in creating this confusion and multiplying the proceedings.

7. The learned Judge who heard the writ petition proceeded on the assumption that an important fact was not taken into

account, when the writ petition was allowed. However, on a perusal of the second supplementary counter-affidavit what becomes evident is that almost in a half-hearted manner, the deponent Dashrath Ram stated that the matter was being verified in the Department; the File was not available and the Department needs further time to take a definite stand since he was busy in the election duty. Hardly, this constitutes any basis for review of an otherwise valid order. The order in the review was passed just on the basis of unverified facts.

8. We, therefore, allow the appeal and set aside the order dated 25-4-2014 passed by the learned single Judge in Civil Review No. 56 of 2013. It is directed that the respondents shall pay all the arrears of salary to the appellant herein within three months from today, and they shall continue to pay emoluments.

(L. Narasimha Reddy,CJ)

BK.Roy/-

(Sudhir Singh, J)

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