

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.419 of 2015

IN

Civil Writ Jurisdiction Case No. 21393 of 2013

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Sanjeet Kumar, Son of Sidheshwar Prasad R/o Bhagwanpur, P.O.- Chandoti, P.S.-
Balaganaj, Panchayat- Panari, District- Gaya.

.... Appellant

Versus

1. The State of Bihar through the District Magistrate, Gaya.
2. The District Education Officer, Gaya.
3. The Block Development Officer, Gaya.
4. The Block education Officer, Beleging, Gaya.
5. The Panchayat Sachiv, Panchayat- Panari, P.S.- Balaganj, District- Gaya.

.... Respondents

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Appearance :

For the Appellant : Mr. Nagendra Sharma, Adv.

For the Respondents : Mr. Dhurjati Kr Prasad, G.P. 7
Md. Faiz Ahmad, AC to G.P. 7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-04-2015

The writ petitioner appellant was appointed as a Shikshamitra in the year 2003 by the Gram Panchayat of Panari, Belaganj, District- Gaya. In accordance with the scheme framed by the Government, he has been appointed as a Panchayat Teacher with effect from 1.7.2006. However, the District Magistrate, Gaya, the 2nd respondent therein, through an order dated 24.4.2007 dismissed the appellant and seven other Panchayat Teachers of the School. Aggrieved by that, the appellant and others filed C.W.J.C. No.16670 of

2007. The learned single Judge heard the matter and disposed of the same through an order dated 4.8.2009 leaving it open to the writ petitioners to avail the remedy of appeal before the Appellate Authority. While some persons preferred the Appeal before the authority within time, the petitioners preferred the Appeal with a delay of about three years. It was rejected as barred by limitation, on 24.6.2013.

The Appeal that was filed by Rubi Kumari, one of the eight Panchayat Teachers, within time was dismissed on 22.10.2010. Aggrieved by that, she filed C.W.J.C. No.3237/12. Through a detailed order dated 18.12.2012, this Court held that the District Magistrate does not have the jurisdiction to terminate the service of Panchayat Teachers and, accordingly, has set aside the order of termination and directed reinstatement of the petitioner therein.

The appellant herein filed C.W.J.C. No.21393 of 2013 feeling aggrieved by the order of rejection of his Appeal dated 24.6.2013. The learned single Judge dismissed the petition through an order dated 17.11.2014, mostly on the grounds of laches.

The principal contention urged by the appellant is that the common order dated 24.4.2007 was set aside by

this Court in C.W.J.C. No.3237 of 2012 and a person similarly situated was granted the relief in C.W.J.C. No.1057 of 2013 as late as on 18.1.2013. Learned Single Judge dismissed the writ petition. Hence, this Appeal.

Heard Shri Nagendra Sharma, learned counsel for the appellant, and Shri Dhurjati Kumar Prasad and Md. Faiz Ahmad, learned counsel for the respondents.

The sole ground on which the Appeal preferred by the appellant before the authority was rejected was that it was filed with a delay of three and a half years. We are conscious of the fact that persons who feel aggrieved must pursue the remedies with due diligence and delay in that behalf would be a factor to deny the relief, even if they are otherwise entitled to it. This case, however, presents a typical situation. Through a common order dated 24.4.2007, the 2nd respondent terminated the services of as many as eight teachers, including the appellant. The initial challenge, thereto, before this Court did not fructify and the teachers were required to avail the remedy of Appeal. Though the teachers approached this Court in a group, they pursued the remedy of Appeal individually. One Rubi Kumari preferred an Appeal in time and the same was dismissed on merits by the Appellate Authority on 22.10.2010. In C.W.J.C. No.3237

of 2012, this Court granted relief by observing inter alia as under:-

“The question for consideration shall be if the original order of District Magistrate suffered from lack of jurisdiction. If the District Magistrate did not have jurisdiction in the matter the order for termination dated 24.4.2007 was void ab initio. If the initial order was itself invalid, it could not be cured by the Tribunal. The order was required to be set aside by the Tribunal for lack of jurisdiction, leaving it for the respondents to proceed in accordance with law if they so desired. The Tribunal has conferred wrongly acquiesced jurisdiction in the District Magistrate not vested in the latter by the law.

The Court is satisfied to direct that the claims of the petitioners are therefore fully covered by the order in CWJC No.18067 of 2011 and they are entitled to similar treatment.”

Accordingly, the writ petition was allowed and relief of reinstatement was granted.

Once the Appeal against a common order was rejected, the mere fact that a person aggrieved by the common order approached the appellate authority belatedly, does not make any difference. Added to that, one teacher, by name Md. Babar Ansari, filed C.W.J.C. No.1057 of 2013 and relief was granted by this Court on 18.1.2013. The appellant stands on the same footing. Further, once it was held that the order passed by the District Magistrate was without jurisdiction, the delay or other aspects virtually become secondary. At the most, the delay in pursuing the remedies may disentitle the person to the benefit of back

wages or arrears of salary, as the case may be.

We, therefore, allow the Appeal and set aside the order under appeal passed by the learned single Judge. We also set aside the order dated 24.4.2007, passed by the 2nd respondent in the writ petition against the petitioner and direct that he shall be reinstated forthwith. However, he will not be entitled to any back wages for the period during which he was out of service. If any individual has already been appointed against the post held by the appellant, he shall be continued on ad hoc basis till a regular vacancy arises.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Ashwani Kumar Singh, J)

K.C.jha/-
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