

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1287 of 2012

IN

Civil Writ Jurisdiction Case No. 10901 of 2011

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1. Ranvir Kumar, S/O Sri Rajendra Prasad, R/O - Village & P.O. - Numar, Under Barhat Panchayat, P.S. - Barhat, District – Jamui.
 2. Suman Kumar, S/O Sri Satyendra Kumar, R/O Village - Bihari Bambai Colony, P.O. & P.S. - Jamui, District - Jamui

.... Petitioners-Appellants.

Versus

1. The State of Bihar through the Secretary, Department of Primary Education, New Secretariat, Patna.
2. The District Teacher's Employment Appellate Authority, Jamui.
3. The District Magistrate, Jamui.
4. The District Superintendent of Education, Jamui.
5. The Block Development Officer, Barhat Block, District – Jamui.
6. The Block Education Extension Officer, Barhat, District – Jamui.
7. The Mukhiya, Gram Panchayat, Darha, District – Jamui.
8. The Panchayat Secretary, Gram Panchayat, Darha, District - Jamui

.... Respondents-Respondents.

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Appearance :

For the Appellant : M/s. Rakesh kumar Singh & Rajesh Kumar Sinha, Advocates.

For the State : Mr. Radha Mohan Pathak, AC to SC SC-29

For the Respondent: Mr. M. D. Dwivedi, (SC-23).

Nos.7 & 8

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 07-07-2015

This Intra Court Appeal is directed against the order dated 22.02.2012 passed in C.W.J.C. No. 10901 of 2011 by the learned Single Judge dismissing the writ petition *in limine* by the following orders.

“ Since necessary parties have not been impleaded who are required to be heard before any indulgence or order can be passed in favour of the petitioner while assailing

Annexure-1, this writ application is dismissed for non-joinder of necessary parties.”

2. The appellants are the writ petitioners.

3. Having heard the learned counsel for the appellants-writ petitioners and the learned counsel for the respondent nos. 7 and 8, we are unable to uphold the order of the learned Single Judge.

4. Having perused the writ petition, it is apparent that the writ petitioners-appellants were not challenging Annexure-‘1’ to the writ petition rather the writ petition was based solely for implementation of order of the District Teachers Appellate Tribunal (hereinafter referred to as “the Tribunal”), as contained in Annexure-‘1’ to the writ petition, which was, to certain extent, modified by its subsequent orders passed on 06.04.2011 as contained in Annexure-‘3’ to the writ petition. The writ petitioners-appellants sought its implementation. In other words, what it sought, was for a mandamus to the Gram Panchayat to obey and implement the order of the Tribunal which was final and binding. Thus, absence of the parties, who were adversely affected by the order of the Tribunal, was not necessary as has been held by the Apex Court in the case of **the Bhopal Sugar Industries Ltd. versus The Income-tax Officer, Bhopal, since reported in AIR 1961 SC 182**. In such a proceeding before the High Court, the correctness of the Tribunal is not in question nor can any one question the correctness

thereof. If that be so, then the effected parties at best would be proper party but not a necessary party. It is only in absence of necessary party that the proceedings become not maintainable but even in that case, first opportunity has to be granted to the petitioner to add necessary parties to the proceedings. It is upon the failure to add them that the writ petition ought not to be dismissed. Surely, a litigant is entitled to correct his pleadings upon being shown that there is some defect therein. Thus, the writ petition ought not to and could not have been dismissed *in limine*.

5. Learned counsel for the Mukhiya and the Panchayat Secretary, Respondent Nos.7 and 8 respectively, has filed counter affidavit. He does not dispute that the order of the Tribunal as contained in Annexure-‘1’ to the writ petition modified by Annexure-‘3’ to the writ petition has attained its finality. No one has chosen to challenge its correctness. Those orders were passed way back in the year 2011. When this Court asked him whether the order of the Tribunal directing dismissal of two selected teachers, who were less meritorious than the writ petitioners, the answer was that as in spite of the notices sent to the writ petitioners, they have not turned up for appointment, the persons, who were ordered to be dismissed have not been dismissed so far. This is putting the cart before the horse. The order of the Tribunal was in two parts, one to dismiss the less meritorious and then appoint the more meritorious, the writ petitioners. The first part ought to be complied

first so that there would be vacancy and it is only that the writ petitioners would be appointed by the respondents. The registered notices were issued to the writ petitioners-appellants and they did not turn up, we find it difficult to accept for the reasons that the writ petitioners had moved before the Tribunal and got orders in their favour for their appointment. The Panchayat not having acted in pursuant to the orders of the Tribunal, they had moved this Court in the writ petition. The writ petition being dismissed *in limine*, they had filed this appeal, then to accept that they were not responding to the notice being invitation to join cannot be accepted as correct. Thus, we have no option but in view of the Judgment of the Apex Court in the case of **the Bhopal Sugar Industries Ltd** (supra), we direct the Respondent No.7, the Mukhiya and Respondent No.8, the Panchayat Secretary, Darha, Jamui, District-Jamui to ensure full compliance of the order of the Tribunal and ensure that two writ petitioners-appellants are appointed forthwith, not later than one month from the date of receipt of production of a copy of this order before the Panchayat Secretary.

6. The Appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

Bhardwaj-P.S./-

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