

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4714 of 2011

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Narendra Kr. Roy S/O Sri Krishna Roy R/O Village - Nirbhay Dehara, P.S. Sikarahata, District - Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Anjani Kumar Singh, Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
3. Dr. Pratibha Verma, District Magistrate, Bhojpur
4. Mr. Raghubansh Kumar, District Education Officer, Bhojpur
5. Mr. Mahesh Jha, Block Education Extension Officer, Tarari, District - Bhojpur
6. Mr. Binod Ram, Mukhiya Gram Panchayati, Basauri, P.S. Sikarahata, District - Bhojpur
7. Mr. Mahendra Prasad, Panchayat Secretary, Gram Panchayat Raj, Basauri, P.S. Sikarahata, District - Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SRI KRISHNA RANJAN
For Opp.Party Nos.3,4 &5: Mr. Devendera Kumar Sinha, AAG-II
Mr. Alok Kumar Rahi, A.C. to AAG-II
For Opp.Party No.6: Mr. Harish Kumar
For Opp. Party No.7: Mr. Baidya Nath Thakur, A.C. to S.C.4

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 20-05-2015

Heard Learned counsel for the petitioner and learned A.A.G.-II and learned A.C. to Standing Counsel No.4 for the opposite party No.7.

The present application has been filed for initiating contempt proceedings against the opposite parties for deliberately and willfully violating the order dated 21.6.2011 passed by this Court in C.W.J.C. No.8530 of 2010.



The said writ application had been filed with the grievance that despite the order of the District Teachers Employment Appellate Authority, Bhojpur, dated 5.8.2010 directing the Member Secretary, Teachers Appointment, Panchayat Basauri, Block-Tarari, District-Bhojpur to ensure the counselling of the petitioners and place them in the proper category and position in the merit list, the same was not done by the respondent authorities and in defiance of the order of the Authority, they had issued appointment letters on 13.8.2010 in favour of the private respondents.

The further stand of the petitioners in the writ petition was that even the subsequent order dated 28.1.2011 passed in Appeal No.34/2010 by the District Teachers Employment Appellate Authority to comply with the earlier order dated 5.8.2010 has also been ignored by the respondent authorities of the Panchayat and the State.

By order dated 21.6.2011, this Court while issuing notices to the private respondent Nos. 7 to 12 and directing the State to file the counter affidavit in the matter further ordered that in the meantime, the respondent authorities of the State shall ensure that the order dated 28.1.2011 staying the appointment of Panchayat Teachers in the category concerned is given effect to.

It is the stand of the petitioner that the order dated 28.1.2011 was communicated to the opposite parties on 1.7.2011 itself



but no heed was paid to the same. Even after filing of the representation by the petitioner on 13.9.2011 before the District Education Officer, Bhojpur, no action was taken thereon. On account of such non-action, the present contempt application was filed on 14.10.2011 after serving a copy of the same on the State on 28.9.2011.

Pursuant to the direction of this Court when the contempt matter was taken up, the opposite party No.7, Panchayat Secretary in his show cause stated that the order under contempt has been complied with by issuing the order dated 3.12.2011 from the office of the Gram Panchayat, Basauri, Block-Tarari, District Bhojpur and communicated to all concerned.

In the rejoinder to the show cause, the petitioner pointed out that the Panchayat Secretary has given wrong and distorted facts with intention to mislead this Court and asserted that till date the letter dated 3.12.2011 purported to have been issued by the opposite party No.7 is not received by any concerned authority and enclosed with the said rejoinder the letters issued by the concerned Headmaster, Sarpanch, Ward Member dated 4.1.2012, 5.1.2012 and 6.1.2012 respectively show that in spite of the stay order granted by this Court and the so-called letter dated 3.12.2011 purported to have been issued by the opposite party No.7, the private respondent Nos. 7 to 12 of the writ petition were still working and getting payment. It was thus

asserted that the opposite party No.7 had not only committed a contempt by wilfully disobeying the order of this Court but sought to mislead this Court by giving vague and false statements.

This Court by order dated 20.2.2012 after noting that the alleged order dated 3.12.2011 itself had been passed more than 5 ½ months after the order of this Court and after the filing of the contempt application and further after perusing the certificates issued by the Sarpanch, Gram Kutchery, Basauri, Panchayat Samiti Member, Gram Panchayat, Basauri, Head Master, Primary School, Nirbhay Dihra, Head Master, Primary School, Gajodih and Ward Member, Village-Patkhauli and further noting that the direction of this Court in its order dated 21.6.2011 in the writ petition was to the respondent authorities of the State to ensure that the order dated 28.1.2011 passed by the Teachers Employment Appellate Authority, Bhojpur staying the appointment of Panchayat Teachers in the category concerned was given effect to but finding prima facie that the same has not been done, rather the order of this Court is being continuously violated and a false statement appears to have been made by the opposite party No.7, initiated proceedings of contempt against the opposite party Nos.3 to 7, namely, Dr. Pratibha Verma, District Magistrate, Bhojpur, Mr. Raghubansh Kumar, District Education Officer, Bhojpur, Mr. Mahesh Jha, Block Education Extension Officer, Tarari, District-Bhojpur, Mr.

Binod Ram, Mukhiya, Gram Panchayat Raj, Basauri and Mr. Mahendra Prasad, Panchayat Secretary, Gram Panchayat Raj, Basauri and gave them an opportunity to file their respective show causes in the matter.

In the show cause filed on behalf of opposite party No.3, District Magistrate, Bhojpur, the stand taken is that she was not directly concerned with the affairs of appointment/termination of the Panchayat Teachers, for which the Panchayat Shikshak Niyojan Ekai is solely responsible under the Bihar Panchayat Shikshak Niyojan Niyamawali, 2006 as amended in 2008. It was further stated that by order dated 30.11.2011, the opposite party No.3 had directed the District Education Officer, Bhojpur and other concerned officials for compliance of the orders of this Court; a wrong statement was given that again by letter dated 21.1.2012 a show cause was issued to the Secretary, Panchayat Shikshak Niyojan Ekai (Opp. Party No.7, Panchayat Secretary) through D.P.R.O. and D.E.O. which fact, however, was retracted in the second supplementary show cause filed on behalf of opposite party No.3. In the Rejoinder to the show cause of opposite party No.3, the wrong statement has been pointed out by the petitioner. In the supplementary show cause filed on behalf of opposite party No.3, it was stated that the opposite party No.5, the Block Education Extension Officer, Tarari was directed to enquire into the



matter regarding working of those Panchayat Teachers whose services were stopped by the Panchayat Secretary, Basauri who after visiting the school reported that the order of this Court has been complied with on 1.2.2012. It was further stated in the supplementary show cause that the delay in compliance of the order dated 21.6.2011 of this Court has been caused at the level of the opposite party No.7, Panchayat Secretary, who was the Secretary of the Panchayat Shikshak Niyojan Ekai, Basauri and for that disciplinary action has been taken by putting him under suspension and departmental proceedings have been initiated by order dated 7.5.2012 issued from the office of the District Magistrate, Bhojpur.

In the second supplementary show cause, reference was made to another letter dated 20.3.2012 issued by the opposite party No.3 to the District Panchayat Raj Officer regarding filing of wrong affidavit by the Panchayat Secretary and also to seek show cause from him as to why such a wrong affidavit has been filed. Pursuant to the response to the aforesaid letter, the District Panchayat Raj Officer directed the B.D.O., Tarari, who is the controlling Officer of the concerned Panchayat Secretary to take necessary action in the matter vide letter dated 30.3.2012. It was further stated in the said second supplementary show cause that the disciplinary action has also been taken against the Panchayat Secretary, who was responsible for non-

compliance of the order of the Appellate Authority and this Court as well by putting him under suspension followed by a departmental proceeding vide order dated 7.5.2012 in the light of Prapatra 'Ka' framed by the B.D.O., Tarari.

In the supplementary show cause filed on behalf of opposite party No.4, the District Education Officer, Bhojpur, the steps taken by him in the matter have been enumerated, including reiteration of the facts stated in the show cause filed by the District Magistrate, Bhojpur, opposite party No.3. The same deals with regard to the show cause filed on behalf of opposite party No.5, the Block Education Extension Officer.

Opposite party No.6, Mr. Binod Ram, Mukhiya, Gram Panchayati Raj, Basauri has stated that he became the Mukhiya of the Gram Panchayat on 28.11.2011 and whatever had happened in the matter of appointment, etc. of teachers was during the tenure of the Ex-Mukhiya and he is not at all responsible for the same.

A series of supplementary show causes have been filed on behalf of opposite party No.7 in which he has tried to show that certain wrong statements made in the first show cause were on account of non-understanding of English language but an attempt has also been made to answer the merit of the writ petition in which allegations have been made against the present opposite party No.7 regarding his



having got his son Nrmal Kumar also appointed as the Panchayat Teacher in the course of the same appointment process. He has also sought to assail the validity of the training certificates given to the petitioners of the writ petition, which are of no relevance in this contempt matter.

So far as the compliance of the interim order dated 21.6.2011 of this Court is concerned, the opposite party No.7 has also failed to meet the specific point regarding issuance of the letter dated 3.12.2011 by him after a delay of 5 ½ months from the passing of the interim order by this Court and even thereafter the continuation of respondent Nos. 7 to 12 of the writ petition as teachers in the school while the matter was being considered by this Court in this contempt application.

Learned counsel for opposite party Nos. 3 to 5 has sought to defend the action of the State authorities mainly on the ground that it was the Panchayat Secretary, who was responsible in the entire matter and the direction of the District Teachers Employment Appellate Authority had been given on 5.8.2010 and 28.1.2011 which he had totally ignored as also the order dated 21.6.2011, which was in effect complied with from 1.2.2012.

Learned counsel for opposite party No.6 has merely submitted that opposite party No.6 having been elected as Mukhiya on

19.5.2011 and specific direction of the Appellate Authority by its order dated 28.1.2011 was given to the Secretary, Employment Unit, i.e., opposite party No.7, hence, he should not be held guilty of any willful disobedience of the order of this Court.

Learned counsel for opposite party No.7 after making a brave attempt to defend the action of opposite party No.7, ultimately conceded that there is no doubt from the records that the contempt has been committed by the Panchayat Secretary. He, however, urged this Court to take a lenient view in the matter treating the fact that the opposite party No.7 had entered in the Government service on 18.3.1990 and during the pendency of the contempt application retired in the month of January, 2015 and has/had unblemished service record, therefore, he seeks the grace of the Court at the fag end of his career considering his future prospect.

In support of the same, learned counsel has placed reliance upon two decisions of the Apex Court in the case of All Bengal Excise Licensees' Association vs. Raghendra Singh and others : AIR 2007 S.C.1386 and in the case of E.T.Sunup vs. C.A.N.S.S. Employees Association: (2004) 8 SCC 683.

Upon a consideration of the facts as placed on the record by the petitioner and different opposite parties, there can hardly be any doubt that the opposite party No.7 has acted in a most cavalier



fashion in defiance of the order dated 5.8.2010 passed by the District Teachers Employment Appellate Authority, Bhojpur by going ahead with the appointment, which included the appointment of his son, despite the order of the Appellate Authority and even thereafter continuing to violate the subsequent order dated 28.1.2011 of the Appellate Authority. Not only that he showed complete disregard to the interim order dated 21.6.2011 passed by this Court and even after the swearing and filing of the writ petition and this contempt application on 28.9.2011 and 14.10.2011 respectively, he continued in his act of defiance and only after the matter was taken up by this Court for the first time on 23.11.2011 and adjourned on the prayer of learned counsel for the State that the purported letter dated 3.12.2011 was issued by him, which also appears to have been merely created with no intention of ensuring that the same was given effect to, as is evident from the materials and averments on the record, and it was only 1.2.2012 that the order under contempt dated 21.6.2011 passed by this Court was finally carried out.

It is, thus, evident that the opposite party No.7 is guilty of willfully and deliberately violating the order dated 21.6.2011 and the course of his conduct right since the first order dated 5.8.2010 passed by the Appellate Authority till 1.2.2012 appears to be one of defiance to the duly constituted quasi judicial authority as also of the order of

this Court passed on 21.6.2011. Thus, this Court has no hesitation in holding that he is guilty of having committed contempt of Court.

So far as opposite party Nos. 3 to 5 are concerned, it is evident from the direction given in the order dated 21.6.2011 that this Court being aware of the fact that the Panchayat Secretary (Opp. Party No.7) was acting in a most illegal manner in the matter of appointment of Panchayat Teachers, wherein he even got his son appointed in the same Panchayat Unit, had specifically directed the respondent authorities of the State to ensure that the order dated 28.1.2011 of the District Teachers Employment Appellate Authority staying the appointment of the Panchayat Teachers in the category concerned was given effect to and thus they cannot be wholly absolved of their responsibilities in the matter when for a period of nearly 7 ½ months they had failed to ensure that the order of this Court was carried out by opposite party No.7, who was direct subordinate authority of opposite party No.5 who, in turn, was under the control and supervision of opposite party No.4 and opposite party No.3. There is also clear averment of the petitioner that as early as on 1.7.2011, the opposite party Nos. 4 and 5 had been specifically intimated about the order dated 21.6.2011 of this Court followed by reminders in the month of September, yet they failed to ensure that the said order was carried out by the opposite party No.7 and therefore it cannot be held that the

opposite party Nos. 4 and 5 are not guilty of willful disobedience of the order of this Court.

As regards opposite party No.3, it appears from the materials on the record that she has sought to take action in the matter immediately upon learning about the order of this Court and thus she is entitled to the benefit of doubt so far as committing contempt of this Court is concerned.

So far as opposite party No.6 is concerned, in the given facts and circumstances, he cannot be held to be directly liable so far as appointment of Panchayat Teachers was concerned, which was carried out during the time of his predecessor but since he was elected as Mukhiya prior to the order dated 21.1.2006 of this Court he was required to ensure that the order of this Court was carried out in his Panchayat Unit, where the appointment of teachers had taken place. In the facts and circumstances of the case, however, this Court also absolves him of the guilt of contempt giving him the benefit of doubt.

On the question of punishment, so far as opposite party Nos. 4 and 5 are concerned, since there has been a case more of negligence in carrying out the order of this Court, this Court issues a warning to them to be careful in future so far as compliance of the order/direction of this Court is concerned.

So far as opposite party No.7 is concerned, considering

his consistent violation of the order of the Quasi Judicial Authority, namely, the District Teachers Employment Appellate Authority, Bhojpur and further that he has made an attempt to mislead this Court in his show causes filed and continued in his defiance of the order under contempt till 1.2.2012 and the order was ultimately complied with after nearly 7 ½ months, no grace of Court can be granted to him in the face of such conduct on his part. He is, accordingly, directed to undergo imprisonment for a period of two months.

The contempt application is, accordingly, disposed of.

(Ramesh Kumar Datta, J)

Later
20-05-2015

Learned counsel for opposite party No.7 submits that the opposite party No.7 would be filing an appeal against the order passed in this case and he may be directed to be released on bail to enable him to do so.

It is directed that the order of imprisonment passed in this case regarding opposite party No.7 shall be kept in abeyance for a period of 30 days from today.

(Ramesh Kumar Datta, J)

V.P. Sinha

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