

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.154 of 2013

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- 1.The State of Bihar.
 - 2.The Director (Primary Education Department) New Secretariat, Patna.
 - 3.The District Education Establishment Committee, through its Secretary District Superintendent of Education, Patna. Presently District Elementary Teacher Promotion Committee through its Secretary, District Programme officer, Establishment, Patna.
 - 4.The District magistrate, Patna.
 - 5.The Superintendent of Education, Patna, presently District Programme Officer, Establishment, patna.
 - 6.The Headmaster cum Drawing and Disbursing Officer Government Vani Mandir Middle School, Rajbanshinagar, PS Shastrinagar, Patna. Presently Boy's Middle School, Punaichak, patna.

....Respondents/Judgment Debtors/Petitioners

Versus

1. Smt. Meena Kumari D/O Sri Kameshwar Narain Singh, Assistant Teacher, Vani Mandir Middle School Rajbanshinagar, PS Shastrinagar, District Patna.

.... Appellant/Decree Holder/Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Mandal, SC- 24, Mr. Arjun Prasad AC to SC 24, Mr. Bipin Kumar AC to SC-24

For the Respondent/s : Mr. Jitendra Mohan Kumar, Adv and Mr. Shailendra Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-11-2016

Heard learned counsel for the parties.

The present revision application has been filed against
the order dated 17.06.2013 passed in Execution Case No. 3 of 2011



by which the executing court below has rejected the petition dated 12.04.2013 filed on behalf of the judgment-debtors praying for disposal of the execution case in view of the full satisfaction of the decree under execution .

The facts in detail require no notice and it would be suffice to mention that the sole Opposite Party of this revision application along with two more persons filed T.S. No. 120 of 1995 for declaration that the grant of B.A. trained scale to the plaintiffs in 1989 was legal and valid and the defendants had no legal right to withdraw the same and also for declaration that the order communicated to the plaintiffs by letter no. 2936 dated 07.08.1985 was illegal invalid and without jurisdiction. The plaintiffs of that suit further prayed for direction to the defendants to promote the plaintiffs to the post of Headmasters in the elementary schools in the district of Patna. By judgment and decree dated 30.10.2004, the said suit was dismissed on contest. Thereafter it was the sole Opposite Party alone who filed the appeal against the said judgment and decree. The appellate court below after hearing the parties and reappraisal of evidence allowed the appeal, set aside the judgment and decree passed by the trial court and decreed the suit in favour of the plaintiff-appellants. It would be fruitful here to take into notice the finding and direction by the appellate court below in its judgment



(Annexure-3) as follows:-

"On the basis of the discussion made above and perusal of documents and oral evidence I find that the defendants have not controverted the submission of the plaintiff-appellant Smt. Meena Kumari that Ajit Kumar and Brajendra Narain are juniors to her and further more the defendants have not been able to show that the plaintiff-appellant is not eligible for promotion in the rank of Headmaster. There is specific case of the plaintiff-appellant that Ajit Kumar and Brajendra Narain who are juniors to her have been given promotion and her promotion has been denied without assigning any reason. I think that when the appellant was denied promotion and junior to her was being promoted specific reasons for doing so must have been shown but here in the present case the defendant has not been able to show any reason as to how and as to why junior to the appellant has been given promotion. Thus I find that the appellant Smt. meena Kumari was eligible for promotion on the post of Headmaster in Elementary School in the district of Patna and grant of B.A. trained scale to the appellant in the year 1989 before Ajit Kumar and Brajendra Narain who were junior to her and have been promoted. The finding of the court below is not based on the evidence and documents produced by the parties and the finding of the court below is not justified and hence the same is set-aside. The plaintiff-appellant Smt. Meena Kumari is entitled for the reliefs sought for in the plaint. So far the letter no. 2936 dated 7.8.95 is not applicable in case of the plaintiff-appellant. No other issues was pressed and I also do not find any defect in frame of the suit."

The plaintiff-opposite party thereafter filed the



execution case praying for execution of the decree as granted by the appellate court below. From the perusal of the execution petition filed by the plaintiff-opposite party, brought on record on behalf of the petitioners, it transpires that the prayer for execution was confined to the relief relating to the promotion of the plaintiff-decree holder to the post of Headmaster w.e.f. 17.07.1995 and for payment of entire dues/remuneration after fixation of salary of headmaster w.e.f. 17.07.1995. It has been stated in the execution petition itself that the relief with regard to B.A. trained scale as directed in the decree has been granted by the defendant-judgment debtors.

From the ordersheet of the execution proceeding (Annexure-8) it is apparent that the executing court had issued show cause notice to the defendant-judgment debtor nos. 3 and 5 for disobedience of the direction of the court and had passed the order on 06.04.2013 rejecting the show cause and directing the decree-holder to deposit the cost for civil imprisonment of the defendant-judgment debtor nos. 3 and 5. However, on 12.04.2013 which was the next date fixed in the execution case, the petition was filed by defendant-judgment debtor nos. 3 and 5 praying for disposal of the execution case in full satisfaction of the decree. The learned court below, however, by the impugned order has come to the conclusion that the direction as contained in the decree under execution has not



been complied as the decree holder has not been given promotion to the petitioner in pursuance to the said direction.

On behalf of the petitioners it has not been disputed that no appeal has been filed by the defendant-judgment debtor-petitioner against the judgment and decree passed by the appellate court below. However, the main thrust of the learned counsel for the petitioners in his submission has been to persuade this Court to come to the conclusion that firstly no such direction has been passed by the appellate court below and secondly even if such direction has been passed, it is not legally sustainable. By filing supplementary affidavits and rejoinders the effort has been made on behalf of the petitioners to drive home the submission that the grant of promotion as claimed by the petitioners in the execution proceeding on the basis of appellate decree cannot be granted. Learned counsel for the sole opposite party however, has controverted the assertions on behalf of the petitioners and has supported the impugned order.

From the perusal of the judgment (Annexure-3) by the appellate court below it is demonstrably clear that the appellate court below has specially noticed the grievance of the plaintiff-appellant that she had been denied promotion and juniors to her were promoted and has categorically held that the plaintiff-appellant is eligible for promotion on the post of headmaster in elementary



school in the district of Patna before Ajit Kumar and Brajendra Narain who were junior to her but had been promoted. Accordingly, the appeal has been allowed and the suit was decreed. The petitioners did not prefer any appeal questioning the conclusion by the appellate court. In this backdrop the petitioners now cannot be legally permitted to assail the conclusion by the appellate court below which will be binding upon them. In this regard it would be fruitful here to take into notice the dictum laid down by their lordships in the case of ***State of West Bengal vs Hemant Kumar Bhattacharjee and ors, AIR 1966 S.C. 1061*** as follows:-

"14..... A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides....."

Examining the matter from another angle also it is well settled that the executing court cannot go behind the decree unless the same is shown or established to be void or *non est* in law. From the facts and submissions in the present case, it does not appear nor it is the case of the petitioners that the reliefs for grant of promotion and payment of salary accordingly as granted by the appellate decree which has been sought to be executed by the plaintiff-decree holder-opposite party have in fact not been granted



or could not have been legally granted by the court in the sense that the decree passed in this regard would become null and void. As such this Court holds that the executing court below has committed no error of jurisdiction or material irregularity in refusing to travel beyond the decree under execution and grant the prayer as made by the petitioners in the petition dated 12.04.2013. The principles in this regard has been reiterated by the Apex Court in the case of ***Rameshwar Das Gupta vs State of U.P. and Anr, AIR 1997 S.C. 410***, wherein, it has been observed as follows:-

"4. It is well settled legal position that an executing court cannot travel beyond the order of decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 C.P.C....."

For the aforesaid reasons and discussions, this Court does not find any merit in this revision application, which is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.01.17
Transmission Date	N.A.

