

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.209 of 2013

IN

LPA 852 of 2010

- =====
1. The Bihar School Examination Board Through Its Secretary, Patna
 2. The Chairman Bihar School Examination Board, Patna
 3. The Secretary Bihar School Examination Board, Patna

.... Petitioner/s

Versus

1. Sushil Kumar Mishra S/O Sri Kameshwar Mishra R/O Teachers Colony Purnea, P.O. Purnea, P.S. Khajanchi Hat, District Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalit Kishore, Sr. Advocate

For the Respondent/s : Mr. Mrigank Mouli, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 01-03-2016

Bihar School Examination Board, through its Secretary (hereinafter referred to as the '**Board**'), has preferred the present application seeking review of the order, dated 11.04.2012, passed by a Division Bench of this Court in LPA No. 852 of 2010 (Sushil Kumar Mishra Vs. Bihar School Examination Board and others). By the aforesaid judgment and order, on an appeal preferred by respondent No.1 herein under Clause 10 of the Letters Patent of the High Court, the Division

Bench, while setting aside an order passed by a learned single Judge, has directed the Board to treat the respondent No.1 to have scored 16 marks in place of 10 marks in the internal evaluation of Paper VII, issue a fresh mark-sheet and, declare the result of Teacher's Training Examination accordingly.

2. The Board had assailed the judgment and order of the Division Bench, under review, by filing special leave petition under Article 136 of the Constitution of India, giving rise to Special Leave Petition (C) No.CC No. 21269 of 2012, which was dismissed as withdrawn in following terms:-

“Learned counsel for the petitioners prays for and is permitted to withdraw the special leave petition with a liberty to approach the High Court by filing a review petition.

The special leave petition is dismissed as withdrawn.”

3. This is how the present application, seeking review of the order, dated 11.04.2012, has been filed.

4. Certain facts are essentially to be taken note of for deciding the dispute raised in the present review application.

Respondent No.1 was appointed as an Assistant Teacher on the basis of a recommendation made by the Bihar



Public Service Commission and he was posted in Middle School, Lohagarhat (Bahadurganj). He had submitted his joining report. Later on, he was sent for requisite training to Primary Teacher's Training College, Kishanganj. He was given admission Roll No. 188. He is said to have completed the regular course in the Session 1998-99, whereafter he was relieved by the Teacher's Training College, for joining in Middle School, Lohagarh Hat, Bahadurganj, and he, accordingly, submitted his joining report on 01.06.1999. The examination for the concerned Teacher's Training Session, 1998-99, was conducted by the Board in the year 2004 for which the respondent No.1 was assigned Roll Code-01102 and Roll No. 196. It transpires from the record, particularly, the mark-sheet issued by the Board that there were altogether 9 papers consisting of theoretical subjects and practical subjects for the said examination. Both the stream, i.e., theoretical and practical, included external examination/evaluation and internal evaluation. In the mark-sheet, which was issued on 20.06.2005, the respondent No.1 was shown to have scored 10 marks in the internal evaluation for Paper-VII (Fine Arts, Music and other related works); whereas, the pass mark was 12. It also appears from the mark-sheet that

his score, on the basis of external evaluation in the said Paper-VII, was 38 out of 45. However, since he was shown to have failed in the internal evaluation, he was declared failed in Paper-VII.

5. It is not in dispute that internal evaluation is made by the College, whereas, the external evaluation is made by the Board on the basis of examination. Final result is published on the basis of the marks supplied by the College to the Board as scored by respective candidates in internal evaluation and performance of candidates in theoretical/practical examination held by the Board itself. Having found to have scored less than the pass marks (12), respondent No.1 approached the Principal of the College (hereinafter referred to as the College). The Principal of the College, admittedly, wrote to the Board, on 07.07.2005, that it was out of sheer mistake that the respondent No.1 was shown to have scored 10 marks, though as per internal evaluation register of the College, the respondent No.1 had scored 16 marks. The Principal of the College accordingly requested the Board to rectify the mistake that had occurred in the result of respondent No.1. A letter to this effect was issued by the Principal of the College subsequently, on 03.11



2005, to the District Education Officer, Katihar-cum-Evaluator of the said examination, also. By a letter, dated 21.01.2006, the Internal Evaluator of the said examination, who was, at that time, posted as Assistant Director, also wrote to the Secretary of the Board mentioning that respondent No.1 had scored 16 marks in the said paper, but out of mistake, 10 marks were mentioned. As the Board did not proceed to rectify the mistake, respondent No.1 approached this Court by filing a writ petition under Article 226 of the Constitution of India, giving rise to CWJC No. 4329 of 2006 (Sushil Kumar Mishra vs. State of Bihar & ors.), seeking a direction to the Board to make necessary corrections in his mark-sheet.

6. A counter affidavit was filed on behalf of the Board admitting that the Principal of the College had sent the aforesaid letter, dated 07.07.2005, to the Board, wherein he (the Principal) had mentioned that it was because of fault at the Principal's end that in place of 16, only 10 marks were mentioned in the final list, which was submitted to the Convener of External Evaluation Committee. The Board, however, took the plea that such a stand of the Principal cannot be considered as this would create hurdles in preparation and publication of the result. A learned Single Judge of this Court, by an



order, dated 13.08.2007, disposed of the writ application with an observation that if the respondent No.1 submits before the Chairman of the Board, an appropriate representation, the Chairman of the Board shall dispose it of, upon verifying the original records, expeditiously. The Chairman of the Board communicated to respondent No.1, through Memo No.442, dated 24.06.2008, rejection of his claim. The respondent No.1, thereafter, approached this Court by filing another application, under Article 226 of the Constitution of India, giving rise to CWJC No. 11953 of 2008, questioning the decision of the Chairman of the Board mainly on the ground that the said order was passed without considering the stand taken by the Principal of the College and the Internal Evaluator. The said application, filed by respondent No.1, gave rise to CWJC No. 11953 of 2008. A learned single Judge of this Court, by an order, dated 26.03.2010, dismissed the writ application accepting the plea taken on behalf of the Board that relevant rules did not contain any provision for re-evaluation and, therefore, no change, in the marks in internal evaluation, was permissible.

7. The Respondent No.1, thereafter, preferred an appeal, under Clause 10 of the Letters Patent of the High



Court giving rise to LPA No. 852 of 2010 (Sushil Kumar Mishra, Vs. State of Bihar & ors.), assailing the order, dated 26.03.2010 passed by the learned Single Judge in CWJC No., 11953 of 2008. A Division Bench of this Court, by the order under review, dated 11.04.2012, allowed the appeal directing the Board to make necessary corrections in the mark-sheet by substituting 16 marks in place of 10 marks against internal evaluation of Paper VII, issue a fresh mark-sheet and declare the result accordingly. The Division Bench so allowed the writ application considering counter affidavit filed on behalf of the Principal-cum-Internal Teacher's Training College, Kishanganj, wherein she had made following statements at paragraphs 6 to 9 of the affidavit:-

"6. That the deponent humbly states and submits that on perusal of the 'Internal Evaluation Register' it appears that the petitioner has got 16 marks out of 30 marks. The 'Internal Evaluation Register' was prepared at the time of internal practical Examination in the presence of the Internal and other members and after entering the marks obtained by the candidates all the members are required to put their signature. This 'Internal Evaluation Register' is a secret document of the institution.

7. That the deponent further most humbly states and submits that on the basis of the 'Internal Evaluation Register' the 'Office Register' is prepared and the marks obtained by the candidates are also

entered in the 'Office Register'. It appears from the perusal of 'Office Register' that due to some bonafide mistake by the then staff of the College, 10 marks has been mentioned in the VII paper of the petitioner in place of 16 marks.

8. That the deponent further most humbly stated and submit that when the mistake come to the knowledge of the authority, the then Principal immediately sent a letter no. 43 dated 07.07.2005 to the Secretary, Bihar School Examination Board for rectifying the bonafide mistake and declare the petitioner as passed candidate.

9. That the deponent most humbly states and admits that then Principal has also requested then Convener in the light of order dated 13.08.2007 passed in CWJC No. 4329/2006 by this Hon'ble Court to rectify the mistake and declare the candidate as successful candidate as it would also be apparent from the bare perusal of the order of Hon'ble Court but the examination board has not passed any order."

8. As has been noticed above, the Board filed a petition under Article 136 of the Constitution of India, which was dismissed as withdrawn with a liberty to file review application and this is how the present review application has been filed.

9. Mr. Lalit Kishore, learned Senior Counsel, appearing on behalf of the Board, has submitted that the result, showing the petitioner to have scored 10 marks in internal evaluation for Paper-VII (Fine Arts, Music and other related



works), was published on the basis of the information supplied by the Principal of the Training College. The subsequent change, suggested by the Principal of the College in relation to the marks for the said subject, was rightly not entertained by the Board inasmuch as such a practice would have created anomalous situation. He further submits that this being a disputed question of fact, the Division Bench committed an error, while entertaining the appeal and passing the judgment and order under review.

10. We have also heard Mr. Mrigank Mouli, learned Counsel, appearing on behalf of respondent No. 1, who has submitted that no ground for review of the order passed by the Division Bench is made out and, therefore, this application deserves to be dismissed.

11. We have carefully perused the documents relied upon by the review petitioner. It is true that against the name of respondent No.1, 10 marks were shown to have been awarded to him in internal evaluation of Paper-VII. Admittedly, 12 marks were the pass marks. No candidate has been shown to have failed in the internal evaluation except respondent No.1, if the correctness of the said list, to the extent it relates to respondent No.1, is not disputed. In Paper-VII, i.e., (Fine Arts, Music and



other related works), the respondent No.1 has, admittedly, scored 38 marks out of 45, which is the highest marks obtained by a candidate in the external evaluation of the said paper. This is the consistent stand of the College that in the record of the College, 16 marks were shown to have been awarded to respondent No.1 in internal evaluation and it was out of mistake that 10 marks were mentioned. A mistake of this nature committed because of slip of pen or absence of mind, in our view, can be corrected at any stage. Absence of a rule/provision/guideline cannot come in the way of overcoming such mistake, which can occur and could have occurred, because of slip of pen or clerical error. In view of the definite stand taken by the Principal of the College and the Internal Evaluator that it was because of mistake that in place of 16, 10 was mentioned as the marks awarded to respondent No.1, based on the register maintained by the College, there could have been, in our opinion, no legal bar in correcting such mistake.

12. There are well accepted and limited grounds for review of a judicial order, which are as follows:-

(i) Discovery of new and important matter of evidence, which, after the exercise of due diligence, was not within the

applicant's knowledge or could not be produced by him at the time, when the decree or order under review is being made.

(ii) The order under review was made on account of some mistake or error apparent on the face of the record and;

(iii) for any other sufficient reason.

13. The first and second grounds are not at all available in the present case. It is not the plea of the Board that because of discovery of new facts, review of the order passed by the Division Bench is required.

14. We do not find any error apparent on the face of the record of the order under review. In the background of the facts, which we have extensively taken note of, we do not find that any sufficient reason exists for reviewing the order, dated 11.04.2012, passed by the Division Bench in LPA No. 852 of 2010 (Sushil Kumar Mishra Vs. Bihar School Examination Board and ors).

15. This application is accordingly dismissed.

16. It is directed that the Board shall comply with the order, dated 11.04.2012, passed by this Court, in LPA No. 852 of 2010, within two weeks from the date of receipt/production of a copy of this order.

17. The interim order, dated 21.01.2015, passed in

this case, stands vacated.

(Chakradhari Sharan Singh, J)

I.A. Ansari, ACJ: - I agree.

(I. A. Ansari, ACJ)

ArunKumar/-

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