

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15086 of 2006

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Kalpana Kumari wife of Shashi Bhusan Sharangi, resident of village-Gopalpur,
P.O. Gopalpur, P.S. Rajoun, District-Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Department of Welfare, Govt. of Bihar, Patna
3. The District Magistrate, Banka
4. The Deputy Development Commissioner, Banka
5. The District Welfare Officer, Banka
6. The Child Development Project Officer, Rajoun, Banka
7. Urbasi Devi @ Urbasi Kumari, wife of Sri Krishna Kumar, resident of village-
Gopalpur, P.S. Rajoun, District-Banka

.... Respondent/s

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Appearance:

For the Petitioner/s :	Mr. Rajendra Prasad, Sr. Advocate Mr. VINOD SHANKER MODI Mr. Suraj Narain Yadav
For the State :	Mr. Nadim Seraj, G.P.-5
For Respondent No. 7:	Mr. Rajendra Narayan, Sr. Advocate Mr. Rajiv Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-12-2016

Heard Mr. Rajendra Prasad, learned counsel appearing for the petitioner, Mr. Nadim Seraj, learned Government Pleader-5 for the State and Mr. Rajendra Narayan, learned senior counsel appearing for the respondent no. 7 along with Mr. Rajiv Kumar Singh, the Advocate on Record.

The petitioner is aggrieved by the order dated 26.10.2006 of the District Magistrate, Banka whereby the District Magistrate in purported compliance of the order passed by the Division Bench in L.P.A. No. 46 of 2004 has reviewed the contest in between the



petitioner and the private respondent to the post of Anganwari Sevika, Anganwari Centre, Tali Tola, village-Rajoun Block in the District of Banka to conclude in favour of the respondent no. 7. A copy of order so passed by the District Magistrate is impugned at Annexure-14 to the writ petition.

Mr. Prasad, learned senior counsel appearing for the petitioner submits that following the selection process the petitioner was appointed. The appointment of the petitioner was questioned by the private respondent before the Deputy Development Commissioner which was rejected. Even the appeal before the District Magistrate was rejected. The order of the Deputy Development Commissioner and the District Magistrate was questioned by the private respondent before this Court in CWJC No. 795 of 1999 and vide order passed on 18.1.2003 the writ petition filed by the private respondent was dismissed. The order passed on the writ petition, was questioned by the private respondent in LPA No. 46 of 2004 and the Division Bench without interfering with the order of the writ Court disposed of appeal taking note of the stand of the private respondent who was the appellant before the Division Bench that her representation is pending consideration before the respondent no. 3 i.e. the District Magistrate, Banka and who was directed to consider the grievance and dispose of the same by a speaking order. He submits that it is following the



directions of the Division Bench that the matter was examined by the District Magistrate, Banka and even though he has specifically noted that the representation of the private respondent was rejected as back as on 26.12.1998 and file was closed and that a specific statement to such effect was also made in the writ petition filed by the private respondent arising from CWJC No. 795 of 1999 but yet he proceeds to examine the claim to conclude against the petitioner and in favour of the private respondent. The short argument advanced by Mr. Prasad is that the District Magistrate, Banka has exceeded his jurisdiction to pass the order impugned at Annexure-14.

The argument of Mr. Prasad is contested by Mr. Seraj, learned State counsel as well as Mr. Narayan, learned senior counsel appearing for the private respondent and who submit that since the Division Bench has directed the District Magistrate to dispose of the representation filed by the private respondent by a speaking order and since in the earlier round the order was not speaking hence it necessitated a discussion on the rival claims to result in the order impugned.

I have heard learned counsel for the parties and I have perused the records.

Facts are not in dispute. It is not in dispute that in the selection process the petitioner was appointed and whose appointment



was questioned by the private respondent before the Deputy Development Commissioner, the District Magistrate, before the writ Court and before the Division Bench in the Letters Patent Appeal but without success. The Division Bench without interfering with the order of the writ Court in dismissing the writ petition filed by the private respondent had simply disposed of the appeal taking note of the plea of the private respondent that her representation was pending before the District Magistrate, Banka which required a disposal. Now, even when the District Magistrate, Banka has understood the purport of the order of the Division Bench and even though he takes notice of the fact that no representation of the private respondent was pending for consideration rather the claim was disposed of as back as on 26.8.1998 thus closing the file, he yet proceeds to re-examine the matter, de hors the jurisdiction so vested in him. It does not require a reference to any judicial pronouncement to hold that executive authorities exercising quasi judicial functions are not vested with review powers unless the statute under which they are exercising powers vest any such jurisdiction.

The matter is even worse out here. Despite the rejection of the claim of the private respondent by the District Magistrate on 26.12.1998 having not been interfered with by the writ Court on the writ petition preferred by the private respondent which was dismissed



and which order of dismissal was affirmed by the Division Bench in the appeal preferred by the private respondent, yet the District Magistrate, Bank exercising powers of review has reversed the position. In other words the District Magistrate, Banka by the order impugned at Annexure-14 has acted as an appellate authority to the opinion of the writ Court as well as the Division Bench while acting purportedly in the light of the directions contained in the order passed by the Division Bench in LPA No. 46 of 2004. Clearly the District Magistrate has exceeded his jurisdiction to re-examine the matter for the moment he has recorded that no representation of the petitioner was pending for adjudication and that the representation of the petitioner was disposed of on 26.12.1998 which was the subject matter of the writ petition filed by the private respondent in CWJC No. 795 of 1999 then he should not have proceeded any further to re-examine the rival claims. The order impugned passed by the District Magistrate at Annexure-14 is an exercise without jurisdiction and cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

The petitioner stands reinstated on her post.

S.Sb/-

(Jyoti Saran, J)

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