

1. The State Of Government of Government of
2. Mr Amarjit Human Resour
3. Mr Ashuto Development D
4. Mr Raghuba
5. Mr Sachhid Bhojpur
6. Mr Kapildeo Bhojpur

6. Mr Kapildeo Singh, the Block Development Officer, Block Sandesh, District-Bhojpur

Versus

15. Bimal Kumar, S/o Dawarika Singh, Vill + Post- Kurmuri Tarari, District- Bhojpur

Appearance :

For the Respondent/s : M/s Maya Shankar Mishra, Lal Mani Sharma & Bishnukant Dubey, Advocates

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 23-08-2016

Heard the parties and, with their consent, this appeal is being disposed of at this stage itself.

2 CWJC No 14791 of 2012 (*Smt Sneha Srivastava & Others –Versus- State of Bihar & Others*) was filed for a direction to the State for payment of arrears of salary to them. They being alleged Teachers who had been duly selected and appointed. The writ petition was filed on 13.08.2012 and in the very first day, when it was listed on 20.09.2012, without even there being given chance to take instructions or file counter affidavit on behalf of the State, the writ petition was allowed with a positive direction to pay arrears of salary within four weeks. There being non-compliance, on 02.11.2012, MJC No 5629 of 2012 was filed. In course of those proceedings, State realized that the order, which was obtained by the writ petitioners, was based on fraud. Accordingly, as advised, it filed Civil Review No 267 of 2013 on 12.07.2013 seeking indulgence of the Court to review the writ order. Unfortunately, the Civil Review stood dismissed on 20.06.2014 for non-compliance of peremptory order dated 14.05.2014, for restoration whereof, MJC No 1006 of 2016 has been



filed and is still pending. Let it be recorded that the learned Single Judge, in order impugned, has noted that the MJC has stood dismissed which is clearly an error of record. When the contempt application that is MJC No 5629 of 2012 was again taken up, learned Single Judge was of the opinion that the mandamus having been issued and having not been interfered and/or altered in any manner, its obedience could not be avoided. Being a contempt proceeding, in order to enforce the mandamus, the Court, by order dated 31.03.2016 passed in MJC No 5629 of 2012, directed for compliance of the mandamus, failing which the Chief Secretary was directed to appear in person. It is this order against which this Letters Patent Appeal has been preferred.

3 Firstly, we would like to notice that the Letters Patent Appeal is not maintainable from an order passed in a proceeding under Article 215 of the Constitution in view of provisions of Section 19 (1) of the Contempt of Courts Act, 1971 which clearly provides for an appeal only in case of conviction. This matter has now been settled by the Apex Court in the case of *D N Taneja -Versus- Bhajan Lal* (1988) 3 Supreme Court Cases 26.

4 In that view of the matter, we are of the view that the appeal, not being maintainable, it ought to have been dismissed which we dismiss.

5 However, Shri Anjani Kumar, learned AAG IV submits that the mandamus having been obtained by playing fraud ought not to be enforced. He may be correct, but for that, an adjudication at the proper level is necessary. In this appeal, no such adjudication can be done. He then submitted that the learned Single Judge proceeded on the basis of error of record that the restoration application being MJC No 1006 of 2016 was also dismissed and, as such, the Civil Review stood finally dismissed without restoration.

6 We have examined the records of MJC No 1006 of 2016. It is still pending. It has not been dismissed. We are sure that if the correct fact has been noticed by the learned Single Judge, he would have considered, first deciding the said restoration application, before proceeding with the contempt application, especially when serious allegations of fraud and fraudulently obtained orders is in question. In our view, as this appeal itself is not maintainable, it is not open for us to comment any further.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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