

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4175 of 2013

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Md. Ejaz Ahmad Ansari, son of Khursheed Ansari, R/O At+P.O.+P.S Nanpur,
District Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary Human Resources Development Department, Government of Bihar, Patna
2. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna.
3. The District Teacher Employment Appellate Authority, Sitamarhi, District Sitamarhi
4. The District Magistrate, Sitamarhi, District Sitamarhi
5. The District Education Officer, Sitamarhi, District Sitamarhi
6. The Block Education Officer, Nanpur, Block Nanpur, District Sitamarhi
7. The Mukhiya Gram Panchayat Raj Nanpur (South) P.S. Nanpur, District Sitamarhi
8. The Panchayat Secretary, Gram Panchayat Raj-Nanpur South, P.S. Nanpur, District Sitamarhi
9. Md. Habibur Rahman, son of Abdul Sattar Sah, R/O at +P.O. Bara Lahuriya, P.S. Parihar, District Sitamarhi at present working as Panchayat Teacher at Govt. Primary School Harijan, Nanpur, District Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr. VINAY KRITI SINGH

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-01-2016

No one appears on behalf of the petitioner. However,
learned counsel for the State is present.

2. This Court does not have any alternative but to pass the
order on merit on the basis of the material available on record.

3. In the present writ petition the petitioner has sought for
relief in the nature of mandamus directing the respondents to
pass an appropriate order/reasonable order after hearing the

parties and considering the facts mentioned in misc. case filed on 31.7.2012 (Annexure-15). The petitioner has also made a prayer for review of the order passed in Appeal No.55 of 2011.

4. It appears that the petitioner has applied for Urdu Panchayat Teacher having Maulavi degree with 82% marks belonging to E.B.C. category against only one vacant and sanctioned post of Urdu Panchayat Teacher at Gram Panchayat Raj Nanpur (South), P.S. Nanpur, District Sitamarhi. Altogether a provisional list of 3143 candidates was prepared where the name of the petitioner is appearing at serial no.1742 in the list. Further the list was short listed, final merit list was prepared and the same was published on 30.12.2008. The name of the petitioner appeared at serial no.102. He was waiting for information for counseling as per marks in the merit list but was surprised to know that one Md. Habibur Rahman (respondent no.9) has been appointed on the post of Urdu Panchayat Teacher through letter no. letter no.11 dated 29.12.2010 issued by the Panchayat Secretary. As per claim of the petitioner before issuance of appointment letter to respondent no.9 no panel was published nor any objection was invited as provided under Rule 9(VIII) of the Bihar Panchayat Primary Teacher (Appointment and Service Condition Amendment) Rule, 2008.



5. Against above illegal act of the authority the petitioner has filed an application before the Block Development Officer, Nanpur, District Sitamarhi on 4.1.2011 and copies of the same was forwarded to the District Magistrate, Sitamarhi, D.S.E. Sitamarhi, S.D.O. Pupari, District Sitamarhi including the B.E.O. Nanpur, District Sitamarhi. Petitioner has sought an information under R.T.I. Act, 2005 before the Block Development Officer, Nanpur requesting him to make him available relevant documents of Panchayat Teacher who has participated in 2008 selection but the Panchayat Secretary did not provide the same and for that the Block Development Officer, Nanpur vide letter no.115 dated 25.1.2011 directed the Panchayat Secretary of the Panchayat to submit all relevant documents of the Panchayat Teacher, 2008. The Panchayat Secretary did not submit the same.

6. Allegation of demanding bribery has been made against the Panchayat Secretary for supply of the documents and ultimately the Panchayat Secretary did not provide the application form of respondent no.9 but after getting documents under RTI petitioner verified the merit list and found manipulation made by the authorities including the name of respondent no.9 in the list. Allegation of manipulation has been

made in the preparation of final selection list.

7. The petitioner approached before the Tribunal vide Case No.55 of 2011. The Tribunal after going to the records of the case and dealing the fact dismissed the petition which was challenged before this Court vide C.W.J.C. No.16603 of 2011. The said writ petition was dismissed as withdrawn. Again the petitioner sought an information under RTI to the Secretary Bihar Madarsa Education Board, Patna. The Madarsa Board provided the information vide letter no.3911 dated 1.8.2012. It has been claimed that respondent no.9 has obtained fake certificate of Foukania examination which is said to be forged certificate and he submits that respondent no.9 has obtained appointment by committing fraud by producing a forged and fabricated document. As has been claimed appointment has been based on fake marks sheet and on that strength petitioner has filed an application for reopening the matter by the appellate authority. It is well known principle of law that unless statute provides Tribunal does not have power to review its own order on merit but the appellate Tribunal and the Court has inherent power to exercise procedural review. Review on merit has been prohibited by the Tribunal and Court unless it is provided under the statute but procedural review is maintainable which is either

inherent or implied in a court or Tribunal to review his own in case of order suffer from lack of jurisdiction or the order has been obtained by practicing fraud. Reliance can be placed on the judgment in the case of Budhia Swain v. Gopinath Deo, reported in (1999) 4 SCC 396 proper to quote paragraph nos. 8 and 9 of the aforesaid judgment:

“8. In our opinion a tribunal or a court may recall an order earlier made by it if

- (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,
- (ii) there exists fraud or collusion in obtaining the judgment,
- (iii) there has been a mistake of the court prejudicing a party, or
- (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In *Hira Lal Patni v. Kali Nath* it was held:



“The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it.”

8. This issue has been dealt with in the case of Grindlays Bank Ltd. V. The Central Government Industrial Tribunal and others, reported in AIR 1981 SC 606. It will be relevant to quote paragraph no. 13 of the aforesaid judgment:

“13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Narshi Thakershi v. Pradyumansinghji, AIR 1970 SC 1273 is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of S. 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act, while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in S. 11. The answer to the question is, therefore, to be found in sub-s. (1) of S. 11 and not in sub-s. (3) of S. 11. Furthermore, different considerations arise on review. The expression 'review' is used in two

distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

9. Allegation has been made that the order has been obtained by fraud by placing fabricated marks sheet. In such view of the matter, every Tribunal in a case of committing a fraud has inherent power to examine and correct the record straight and if it is found that order has been obtained by fraud to avoid multiplicity of litigation, proper course to review its own order.

10. This Court directs that the Tribunal will examine the case of the petitioner in misc. case which has been filed on 31.7.2012 before the District Appellate Tribunal, Sitamarhi and examine the allegation of playing fraud by respondent no.9. If that will so he will pass necessary order.

11. With the aforesaid observation this writ petition is disposed of.

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(Shivaji Pandey, J)