

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.76 of 2015

IN

LPA 536 of 2014

- =====
1. The State Of Bihar, through its Chief Secretary, Old Secretariat Building, Patna, Bihar.
 2. The Secretary to the Government in the Department of Water Resources Department, Sinchai Bhawan, Patna.
 3. The Director, Land Acquisition and Rehabilitations-cum- Dy, Secretary of Water Resources Department, Sinchai Bhawan, Patna.

.... Petitioners

Versus

1. Narayan Kumar, Son of Late Suresh Kumar, Resident of Village and Post Karnpur, P.S. Supaul, District Supaul.
2. Krishna Kant Jha, S/O- Sri Ram Chardara Jha, Resident of village + Post- Sukhpur, P.S. Supaul, District- Supaul.
3. Ramjee Mahto, S/O- Late Jangal Mahto, Resident of Village and P.O.- Kranpur, P.S.- Supaul, District- Supaul.
4. Siyaram Choudhary, S/O Sri Mahabir Choudhary, Resident of Village- Nariar Bhengha, P.O- Nariar, P.S. and District- Saharsa
5. Ravindra Narayan Thakur, S/o Late Upendra Narayan Thakur, Resident of Village and P.O.- Chainpur, P.S.- Bangaon, District- Sharsa.
6. Vinay Kumar Jha, S/o Late Chada Jha, Resident of Village and P.O.- Chainpur, P.S.- Bangaon, District- Saharsa.
7. Shyam Sunder Jha, S/o- Late Bhola Jha, Resident of Village and P.O.- Lagwan, P.S.- Sonbarsa, District- Saharsa.

.... Respondents

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Appearance :

For the Petitioners : Mr. Lalit Kishore, PAAG
Mr. Ranjeet Kumar, AC to PAAG
For the Respondents : Mr. P. K. Shahi, Senior Advocate
Mr. Prafull Chandra Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-08-2016

Heard Mr. Lalit Kishore, learned Principal Additional
Advocate General, appearing on behalf of the petitioners, and Mr. P.
K. Shahi, learned Senior Counsel, appearing on behalf of the

respondents.

2. The respondents, i.e., opposite parties herein, were appointed to the post of Class 3 and Class 4, between the years 1983 and 1986, by the Rehabilitation Officer, Supaul. When it transpired that the Rehabilitation Officer had made the said appointments without any authority or competence, the services of the respondents, i.e., opposite parties herein, were terminated after giving them notices to show cause, if any, against their proposed termination of service.

3. Aggrieved by the termination of their services, the respondents, i.e., opposite parties herein, filed writ petitions, which gave rise to C.W.J.C. No. 10210 of 1997, C.W.J.C. No.9608 of 1997, C.W.J.C. No.10991 of 1997 and C.W.J.C. No.9591 of 1997 challenging their respective orders of termination.

4. Though the writ petitions were allowed by order, dated 01.03.2000, passed in the writ petitions, and the orders of termination were accordingly set aside, the order, so passed in the writ petition, came to be set aside in the appeals, which had been preferred by the State against the order, dated 01.03.2000, aforementioned. Against the order, dated 01.03.2000, aforementioned, the petitioners herein preferred appeals which gave rise to L.P.A. Nos. 712 of 2000, L.P.A. No.693 of 2000, L.P.A.708

of 2000, L.P.A. No.681 of 2000 and L.P.A. No.678 of 2000. These appeals were heard along with L.P.A. No.675 of 2000 and, on 29.01.2003, all the Letters Patent Appeals were allowed and the order, dated 01.03.2000, passed by the learned single Judge was set aside.

5. In the appeals, though the respondents, i.e., opposite parties herein, submitted that their cases were identical to the case of one Sunil Kumar Singh, whose service was regularized on the basis of the order passed in L.P.A. No.270 of 2000, the Division Bench, while disposing the appeals on 29.01.2003, took note of the decision rendered in L.P.A. No.270 of 2000, but did not grant the same relief, which Sunil Kumar Singh had been given and, thus, as indicated hereinabove, allowed the appeal by setting aside the order, dated 01.03.2000, whereby the writ petitions, namely, C.W.J.C. No. 10210 of 1997, C.W.J.C. No.9608 of 1997, C.W.J.C. No.10991 of 1997 and C.W.J.C. No.9591 of 1997, had been allowed.

6. Thereafter, the respondents, i.e., opposite parties herein, and others preferred Civil Appeal No.5682-5684 of 2004 before the Supreme Court. However, in view of the decision of the Constitution Bench, in **Secretary, State of Karnataka and others Vs. Uma Devi and others**, reported in (2006) 4 SCC 1, the Supreme Court dismissed the civil appeals by order, dated 11.07.2006. The

matter of termination of the services of the respondents, i.e., opposite parties herein, thus, came to be finally set at rest.

7. After long five years, the respondents, i.e., opposite parties herein, filed a fresh writ application seeking direction to be issued to the State authorities to consider their cases in the light of the decision rendered by the Supreme Court in the case of **State of Karnataka and Others Vs. M.L. Keshri and Others**, reported in (2010) 9 SCC 247. By an order, dated 21.09.2011, a learned single Judge of this Court dismissed the writ petition by making an observation to the effect that it would be inappropriate to clarify, or go behind, the order passed by the Supreme Court and issue any positive direction. However, the learned single Judge made an observation in the order, dated 21.09.2011, aforementioned, that the writ petitioners could move the Supreme Court for any clarification or for consideration of their cases as per the decision rendered in **M.L. Keshri** (supra).

8. In the light of the decision, dated 21.09.2011, rendered in C.W.J.C. No.16341 of 2011, the respondents, i.e., opposite parties herein, moved a Special Leave Petition before the Supreme Court, giving rise to S.L.P. (Civil) No.36428 of 2011, for re-consideration of their cases in the light of the judgment delivered in **M.L. Keshri** (supra). However, the respondents, i.e., opposite

parties herein, faced with the likelihood of their Special Leave Petition being dismissed, expressed their wish to withdraw the Special Leave Petition with liberty to file a review petition. This prayer was allowed and the Special Leave Petition was, accordingly, dismissed as withdrawn.

9. A petition for review of the order, dated 21.09.2011, passed in C.W.J.C. No.16341 of 2011, was then preferred, which gave rise to Civil Review No.92 of 2012. This review petition was allowed by order, dated 07.03.2012, wherein the learned single Judge observed, *inter alia*, thus:

*“upon considering the submission of learned counsel for the parties, this court is of the opinion that though the petitioners may have lost the first round right up to Hon’ble Apex Court, but in view of the fact that with regards to other similarly situated persons, some relief has been granted, the petitioners ought not be discriminated against while considering their cases. On this basis and simple principle, this court is inclined to grant relief sought for by the petitioners in the present application. Accordingly, this review application is allowed. The respondents shall be obliged to consider the case of the petitioner in the manner they have done with others similarly situated, keeping in view the decision of the Hon’ble Apex Court in The Case of **Uma Devi** (supra) as well as **M.L. Keshri**.”*



10. Aggrieved by the observations made, conclusions reached and directions given, by the order, dated 07.03.2012, the present petitioners impugned the same in L.P.A. No. 536 of 2014. While the L.P.A. No.536 of 2014 was still pending, the Director, Land Acquisition and Rehabilitations-cum-Deputy Secretary of Water Resources Department, Government of Bihar, took up, in the light of the order, dated 07.03.2012, passed in Civil Review No.92 of 2012, the cases of the respondents, i.e., opposite parties herein, for consideration and by an order, dated 29.08.2013, contained in Memo. No. 1505, rejected their representations by holding that their appointments were illegal. It was then that the L.P.A. No.536 of 2014, which had arisen out of the order, dated 07.03.2012, passed in Civil Review No.92 of 2012, came up before this Court, whereupon an order was made, on 28.01.2015, in L.P.A. No.536 of 2014, dismissing the appeal as having become infructuous. The order, dated 28.01.2015, being relevant and of immense importance, is reproduced hereinbelow:-

“Heard Mr. Ujjwal Kumar Sinha, learned counsel, appearing for the appellants, and Mr. Anil Kumar Jha, learned Senior Counsel, appearing for the respondents.

It has been submitted, on behalf of the appellants, that in terms of the directions given by the order under appeal, which was passed, on

07.03.2012, in Civil Review No.92 of 2012, by a learned single Judge of this Court, the appellants considered the cases of the respondents for their regularization and, upon consideration of the cases of the respondents, their prayers have been rejected by order, dated 29.08.2013.

In view of the above, this Letters Patent Appeal, which was filed in the year 2014, has, admittedly, become infructuous and shall stand dismissed accordingly.”

11. From a bare reading of the order, dated 28.01.2015 aforementioned, it becomes abundantly clear that in the light of the fact that the appellants, i.e., the present petitioners, had considered the cases of the respondents, i.e., opposite parties herein, for their regularization in the light of the order, dated 07.03.2012, in Civil Review No.92 of 2012 and, upon consideration, their prayers were rejected by order, dated 29.08.2013 and, therefore, both the parties admitted before this Court that the Letters Patent Appeal had become infructuous and it was on these premises that this Court dismissed as infructuous, the appeal by its order, dated 28.01.2015, aforementioned.

12. We, therefore, owe a duty to clarify that the order, dated 28.01.2015, aforementioned was passed by this Court on both the parties having admitted that the appeal aforementioned had become infructuous, because of the fact that the cases of the

respondents, i.e., opposite parties herein, had already been considered for regularization, but their prayers were rejected by the order, dated 29.08.2013.

13. Before parting with this review petition, we may point out that though the Supreme Court had, in *State of Uttar Pradesh vs. Brahma Dutta Sharma and Another*, reported in (1987) 2 SCC 179, held that a decision, whereby a writ petition is disposed of, cannot be re-opened by making a miscellaneous application, the Supreme Court, in its latter decision, in *K.A. Ansari and Another vs. Indian Airlines Limited*, reported in (2009) 2 SCC 164, has held that it is within the power of the Court to always clarify its own order. What the decision, in *K.A. Ansari* (supra), reflects is that an order, made in a writ petition, must give the relief, which the person approaching the Court was entitled to, and if, in order to make the relief available, the Court finds that a clarification is necessary to make as to what it had decided or ordered, it would remain within the powers of the Court to so clarify its own order. It may be noted that the power, which vests in a Court, casts really an obligation on the Court to exercise such power, when the facts of a given case so warrant.

14. It is also trite that an order or decision of a Court can cause prejudice to none. Hence, when clarification is warranted

on the face of the record, it becomes the duty of the Court, particularly, when it is the Court of plenary jurisdiction, such as, a writ Court, which is the Court of records, to correct its error, rectify its record, clarify its order and give such relief, which the person approaching the Court, is, in the facts of a given case, entitled to receive. In fact, there is no dispute that if there is a mistake apparent on the face of the record and such a mistake is brought to the notice of the High Court or if the Court's order gives rise to confusion, it becomes the obligation of the High Court to correct the mistake or clarify its order so that the parties do not unwillingly and, coincidentally, suffer.

15. With the clarification, as given hereinabove, this review petition shall stand disposed of.

16. There shall, however, be no order as to costs.

(I. A. Ansari, CJ)

Anjana Mishra, J : I agree.

(Anjana Mishra, J)

K.C.jha/-

AFR/NAFR	AFR
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