

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4725 of 2013

Nujhat Bano W/O Md. Manzur Alam Resident O=At Milky, P.O. Lalganj, P.S. K. Hat, District Purnea.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Government Of Bihar, Patna.
2. The Secretary, Human Resources Development Department, Bihar, Patna.
3. The Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna.
4. The Deputy Director Primary Education, Bihar, Patna.
5. The District Magistrate, Purnea.
6. The District Education Officer, Purnea.
7. The District Programme Officer, Purnea.
8. The Block Education Officer, Sri Nagar, District Purnea.
9. The Panchayat Secretary, Jageli Panchayat, District Purnea.
10. The Mukhiya, Gram Panchayat Raj Jageli, District Purnea.
11. Md. Nazamuddin S/O Md. Abdul Samad Resident Of Village Jhagurwa, P.O. Jageli, Block Sri Nagar, District Purnea.

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Gyanand Roy

For the Respondent/s : Mr. Madhubala Verma, A.C. to G.A.-2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 25-02-2016

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the petitioner is challenging the order dated 08.01.2013 passed by the District Teachers Appointment Appellate Authority, Purnia, as has been claimed that authority has illegally exercised the power of review when the Bihar Panchayat Primary Teachers (employment and service condition), Rule 2006

does not confer any power of review to the appellate authority and he has wrongly reviewed his earlier order dated 09.01.2012 and thereby allowed the review application of the private respondent, and that too, the said review application was entertained after a delay of one year.

3. Short facts of this case are that five posts were advertised for the appointment of Panchayat Teacher for Jangeli Gram Panchayat. The same was divided in the following manner; one post for unreserved, one for unreserved female candidate, one for the E.B.C. candidate, one post E.B.C. female and one post for Scheduled Caste. The petitioner was appointed as Panchayat Teacher under the category of unreserved female candidate. As Md. Nazamuddin, respondent No.11 could not be appointed, he being aggrieved of his non-selection, approached the Tribunal, claiming that the persons having a lesser marks than him, has been appointed and he has wrongly been left out.

4. The case was registered as Case No.782 of 2010, the Appellate Authority vide order dated 09.01.2012, rejected the claim of the respondent No.11, on the ground that Kumari Kiran Thakur, who is a trained candidate has right over the untrained candidate as the respondent No.11 is untrained and he cannot be appointed in place of



Kumari Kiran Thakur. On this ground, the claim of the respondent No.11 has been rejected. The respondent No.11 again approached the Tribunal after lapse of one year for recalling the order. The Tribunal vide order No.7, dated 08.01.2013, entertained the said application and directed the adjustment of the petitioner under the category of unreserved candidates. Ultimately, the Tribunal has held that though the appointment of Punam Kumari is illegal but was allowed to continue on the post Panchayat teacher and ultimately order has been passed against the petitioner, cancelling her appointment, which is the crux of the grievance of the petitioner.

5. Learned counsel for the petitioner submits that the provision does not confer any power to the appellate authority to review its order. It is well known principle of law that the review is the creation of the statute, unless the power of review is conferred on the Court or the authority, the power of judicial review cannot be exercised. In the present case, the appellate authority has wrongly exercised the power of review and set aside the appointment of the petitioner.

6. In support of his submissions, he placed reliance on a judgment in *Grindlays Bank Ltd. vs. The Central Government Industrial Tribunal and Others*, reported in *A.I.R 1981 S.C. page-*



606, where the Apex Court has specifically adumbrated that two types of review is provided, one is the procedural review and another is the review on the merit. The procedural review can only be exercised when there is an inherent error in following the procedure but in a case of merit review, the Tribunal or the Court cannot exercise the power of review unless it is conferred explicitly or impliedly.

7. Whereas, learned counsel for the respondent submits that it is not a case of review but the order was obtained by suppression of material facts as Kumari Kiran Thakor was not appointed as she did not appear in the final counseling, by placing a wrong fact the order was obtained against the respondent No.11, it is nothing but a suppression of material facts and suppression can be rectified at any stage.

8. In support of his contention, he placed reliance on a Judgment in ***Budhia Swain and Others. vs. Gopinath Deb and Others, 1999 (4) S.C.C. page-396***, where the Hon'ble Supreme Court has categorically held that in what circumstances even the Tribunal or the Court does have a power to review or recall its own order; where the Court suffers inherent lack of jurisdiction; when the order has been obtained by fraud or by collusion; when the order has been

obtained by mistake of the Court, prejudicing the party; ignorance of fact that necessary party has not been served at all or had died and the estate was not represented.

9. On the strength of the aforesaid judgment of the Hon'ble Supreme Court, learned counsel for the respondent submits that the Tribunal has not committed any error in entertaining the review application.

10. In the present case, the question would arise, first, whether the Court has power of review or not. Even, if the power is conferred, in what manner the power is to be exercised. In the present case, second issue is not relevant for the purpose of this case, but the power of review is to be exercised in terms of Order- 47 Rule-1 and while exercising the power, the Court would not act as Court of appeal.

11. In the present case, there is no power of review, but in what circumstances, this court is to deal with in what circumstances the Court or Tribunal can rectify its mistake.

12. Having considered the rival contentions of the parties, the review is the creation of the statute, which cannot be enforced by a Court or Tribunal unless the power of review is conferred on the



Court or the authority. If such power has not been conferred, the Tribunal or the Court will not have a right to exercise that power. If there is inherent lack of jurisdiction, certainly the Court or the Tribunal can recall its order, if fraud has been committed or by collusion order has been obtained, that can be rectified, but in entire judgment the Tribunal has not arrived to a finding that there is lack of inherent jurisdiction to him and so much so that nothing has been said about fraud or collusion made by any party, but the Tribunal has only said that the Panchayat Secretary has not placed the record with regard to non-appointment of Kumari Kiran Thakur, so it has a jurisdiction to recall the order. The Appellate Tribunal could have recalled the order but cannot rewrite the order. What appears in this case is that the Tribunal instead of recalling the order has rewritten the original order.

13. As has been brought to the notice of this Court, Kumari Kiran Thakor was not appointed and on that ground the case of the respondent No.11, was rejected that the Tribunal committed an error and that could have been rectified by taking an appropriate steps by respondent No.11 but the fact remains the appellate Tribunal in the garb of making correction can not review his own earlier order, which makes the order completely illegal and not sustainable in law.

14. This Court feels that the order dated 08.11.2013 passed by the Tribunal under the exercise of the power of review is not permissible as the Appellate Authority does not have any power to review or recall its order. So far the order passed by the Tribunal dated 9.1.2012 with respect to case No.782 of 2010 is concerned, it suffers from illegality on account of the fact that admittedly, Kumari Kiran Thakur who was a trained candidate has not been appointed on the post of Panchayat Teacher.

15. In such view of the matter, the order dated 09.01.2012 passed in Case No.782 of 2010 and order No.7 dated 08.01.2013 are set aside. The matter is remanded back to the Tribunal for fresh consideration. The Tribunal is directed to dispose of the case within a period of six month from the date of receipt / production of a copy of this order, after hearing all the contested parties.

16. In the meantime, status quo as on today will be maintained by both the parties.

17. With the aforesaid observations and directions, the present petition is allowed.

(Shivaji Pandey, J)

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