

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.397 of 2012

IN

Civil Writ Jurisdiction Case No. 16654 of 2009

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1. Satyendra Prasad Son Of Sri Kusheshwar Raj Keshari Resident Of Village - Korbaddha, P.S. Muffasil, Dsitric - Samastipur.
 2. Sunil Kuamr Son Oframeshwar Rai Resident Of Village - Korbaddha, P.S. Muffasil, Dsitric - Samastipur.
 3. Rekha Kumari Daughter Of Rambali Thakur Resident Of Village - Korbaddha, P.S. Muffasil, Dsitric - Samastipur.
 4. Uma Shankar Sahani Son Of Bishundev Sahani Resident Of Village - Korbaddha, P.S. Muffasil, Dsitric - Samastipur.
 5. Bubby Rani Daughter Of Shivanandan Mahto Resident Of Village - Korbaddha, P.S. Muffasil, Dsitric - Samastipur.

.... .Respondents/Petitioners

Versus

1. The State Of Bihar.
2. Director Primary Eduation, Bihar, Patna.
3. District Magistrate, Samastipur.
4. District Education Officer, Samastipur.
5. District Superintenant Of Education, Samastipur.
6. Block Development Officer, Samastipur.
7. Mukhiya, Gram Panchayat Raj Lagunia, Suryakanth, Samastipur.
8. Secretary, Gram Panchayat Raj Lugunia, Surya Kanth Samastipur.
9. Member, District Teacher Engagement Appellate Authority, Samastipur..

Respondents/Opposite Parties

10. Vijay Kuamr Son Of Sri Ram Nandan Rai Resident Of Vilalge - Korbaddha (Barmassi Tola), P.S. Samastipur Muffasil, Dislric - Samastipur.
11. Rita Devi Wife Of Shri Ram Chandra Thakur Resident Of Village - Korbaddha, P.S. - Samastipur Muffasil District -Samastipur.
12. Kumari Malti Ranjan Daughter Of Ramrup Narayan Mahto Resident Of Government Field Railway Colony, Madhuri Chowk, Quarter No. 477, P.S. - Samastipur, Town, District -Samastipur.

.... Writ Petitioners/Opposite Parties

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Appearance :

For the Petitioners : M/s Siya Ram Shahi and
Sanjeev Kumar, Advocates
For the State : Mr. Sanat Kumar Mishra, AC to AAG8
For Opp. Party No. 9: Mr. M.N. Parbat, Sr. Advocate
m/S Bipin Kumar and Arun Kumar, Advocates
For Opp. Party Nos. 10-12: Mr. Abhay Shankar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 01-02-2016

I have heard the parties and perused the records of the case.

This review application has been filed for review of the order dated 20.07.2012 passed by this Court in C.W.J.C. No. 16654 of 2009.

The review petitioners were the respondent nos. 9 to 13 in the writ petition and were given opportunity of hearing.

The writ petition was filed by the respondent nos. 10 to 12 challenging the order dated 10.11.2009 passed by the District Teachers Employment Appellate Authority, Samastipur in Appeal No. 344/2009 and other analogous matters. It was allowed holding that the writ petitioners, who were working as teachers in different schools, were never given any reasonable opportunity to be heard before passing order resulting in their ouster from their respective posts. Their respective cases were also nowhere discussed in the impugned order. Thus, it was held that the impugned order has been passed without following the principles of the Natural Justice and, accordingly, the same was quashed so far it affected the writ petitioners and the matter was remitted to the appellate tribunal for fresh consideration and pass a reasoned order after granting of reasonable opportunity of hearing to all the concerned parties preferably within three months. Thereafter, the present Civil Review

Petition No. 397 of 2012 came to be filed by the present petitioners who were respondent nos. 9 to 13 in the writ petition.

The main emphasis of the review petitioners is that, in fact, the writ petitioners misled this Court by stating that they were not granted reasonable opportunity. It has been contended during the course of hearing that they were not only heard but their appeal No. 308 of 2009 was heard analogous with Appeal No. 344 of 2001 which would be apparent from the order impugned itself. On such issue having been raised, this Court, vide its order dated 19.08.2015, called for the original records of Appeal Nos. 344 of 2009 and 308 of 2009 from the District Teachers Employment Appellate Authority, Samastipur. The records were produced and the matter was heard on different occasions. It appears from perusal of the records that Appeal No. 308 of 2009 was filed by Pramita Kumari and others including the respondent nos. 10 to 12. There is no order on record either having been passed in Appeal No. 344 of 2009 or Appeal No. 986 of 2009 or Appeal No. 308 of 2009 showing that the appeals were directed to be heard together, and, therefore, they were disposed of as such rather it appears that that Appeal Nos. 986 of 2009 and 344 of 2009 and so far Appeal No. 308 of 2009 is concerned a direction was given to the employment unit to make payment of the appellant in accordance with law on the basis of the



order dated 10.11.2009 passed in Appeal Nos. 344 of 2009 and 986 of 2009. The order impugned does not indicate anywhere that the writ petitioners were heard or given reasonable opportunity of being heard and their respective cases were discussed and considered by the appellate authority. However, it is intriguing that a copy of the order dated 10.11.2009 is on record which appears to have been communicated to the concerned showing that the same has been passed in five appeals including the order passed in Appeal No. 308 of 2009 and not only that, the language of the order is slightly different from the impugned order which stands recorded in the ordersheet, however, the net result is unchanged.

Looking at this, a question was put to the Additional Advocate General No. 8 as to whether it does not amount to tampering with the record as the appeals were never heard analogous and there is difference, as mentioned above, between the order communicated and order available in the ordersheet. It was verbally asked in view of the above as what action is proposed to be taken on behalf of the State against the erring person.

When the matter was being heard, Mr. Mahesh Narain Parbat, learned senior counsel along with Mr. Arun Kumar, appeared for the respondent no. 9 by filing I.A. No. 321 of 2016 stating that on the basis of oral observation of this Court regarding the alleged



tampering, learned AAG 8 had written a letter to the Principal Secretary, Education Department and the Director, Primary Education, communicating them regarding displeasure of this Court with respect to the tampering in the records of the District Teachers Engagement Appellate Tribunal and this Court also wants to know as to what action is proposed against such erring officials. Then, without dealing with the case and without granting opportunity to the respondent no. 9, the Director, Primary Education, has straightway written a letter to the Director(Administration)-cum-Additional Secretary, Department of Education, vide letter dated 04.01.2016, which is part of Annexure A series to the counter affidavit, to take action under Rule 43(a) of the Bihar Pension Rules and also to lodge First Information Report in this regard.

The letter was written by learned AAG 8 only in view of oral observation of this Court which was required to be communicated and, as such, his action cannot be faulted with.

However, Mr. Parbat, learned senior counsel appearing for the respondent no. 9, has urged that action is being without even issuing show-cause notice to the petitioners. He also points out regarding some sort of protection given to the incumbent of the office of the Member of the Tribunal under Rule 17 of the Bihar State School Teachers and Employees Disputes Redressal Rules,



2013 providing that no suit, prosecution or other prosecution shall lie against Presiding Officer or any other person authorised by such Presiding Officer for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. Mr. Parbat submits that the language of the order communicated and the order which is in the ordersheet may have differed but the net result is one and the same that it cannot be inferred that the same was done with an intention to grant certain benefit to any person. It is contended that, in fact, under the guidelines the order is to be necessarily communicated to the concerned and, as such, it has also been communicated to the concerned authority for proper action and Appeal No. 308 of 2009 was written on the top of the order communicated for the reason that the order was made applicable in Appeal No. 308 of 2009 also which would be evident from the record. However, this sort of submission made on behalf of the respondent no. 9 at the time of hearing does not match with the statement made in paragraph 5 of Interlocutory Application No. 321 of 2016 which clearly indicates that all the cases were disposed of on 10.11.2009 after hearing the parties. However, on such query having been made, learned counsel has submitted that such averment has been made due without looking into the records of the case which was already summoned by this

Court and, thus, cases not available to the respondent no. 9.

It is intriguing as to why the numbers of five appeals were printed in the order concerned and in the first sentence of the order it is stated that Appeal No. 344 of 2009 and others were heard clearly indicating that all the aforesaid appeals were heard together but Mr. Parbat submitted that the first sentence of the original order says with respect to the order dated 10.11.2009 which clearly indicates that two appeals, i.e., Appeal Nos. 344 of 2009 and 986 of 2009 were only heard together.

However, on such submission having been made on behalf of the respondent no. 9 and learned counsel for the petitioners after looking into the records of the case, this Court would have no hesitation in holding that the writ petitioners of C.W.J.C. No. 11654 of 2009 were never given reasonable opportunity of being heard before passing final order which has affected them and, thus, the order passed in the aforesaid case does not require any modification at all. As such, the civil review application is fit to be dismissed.

However, learned counsel for the respondent no. 9 submits that till date no First Information Report has been lodged. In such a situation and having regard to the provisions referred by him, the explanation having given by the respondent no. 9 at the time of hearing of this application, this Court is of the view that no coercive

step should be taken against him without proper inquiry into the matter and if something appears against the respondent no. 9 or any other person then without granting reasonable opportunity to him/them.

Accordingly, this Civil Review Application is dismissed with the aforesaid observation.

Let the records of the case be returned to learned counsel for the State.

(Dr. Ravi Ranjan, J)

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