

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.345 of 2016

Arising out of

LPA No.190 of 2014

- =====
1. Birendra Prasad Deo @ Birendra Prasad son of Sri Rameshwar Prasad Deo, resident of village Pakari, Police Station Baheri, District Darbhanga.
 2. Kailash Lal Deo, son of Sri Deo Narain Lal Deo, resident of village Uraina, Police Station Baheri, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Commissioner, Department of Health, Government of Bihar, Patna
4. The Director in Chief, Health Services, Government of Bihar, Patna.
5. The Regional Deputy Director, Health Services, Government of Bihar, Darbhanga Division, Darbhanga.
6. The Civil Surgeon cum Chief Medical Officer, Madhubani
7. The Civil Surgeon cum Chief Medical Officer, Madhepura
8. The Incharge Medical Officer, Primary Health Centre, Benipatti, District Madhubani
9. The Incharge Medical Officer, Primary Health Centre, Madhwapur, District-Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate
Mr. Shiv Kumar, Advocate
Mr. Sahjanand Sharma, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 15-02-2017

The petitioner has sought review of the order passed by this Court on 22nd of July, 2016 whereby, L.P.A. No.190 of 2014 filed by the appellant was dismissed on the ground that the learned Single Bench has not found any error in the report submitted by one



man enquiry committee warranting interference in the termination of the petitioner.

Brief facts of the case need to be stated. Earlier, number of writ petitions were filed challenging termination of the employees of the Health Department. The said writ petitions were allowed on the ground that there is violation of principles of natural justice as no opportunity of hearing was granted to the employees. In appeal, a Division Bench of this Court in the case of The State of Bihar & Ors. vs. Sohan Roy & Ors., 2010(2) P.L.J.R. 397 set aside the said order and appointed a one man fact finding enquiry committee, headed by a former Judge of this Court. The relevant terms and conditions of the said one man enquiry reads as under:

- (a) The directions contained in the order passed by the learned Single Judge against which the present appeals are preferred would stand nullified.
- (b) A one man committee of Hon'ble Mr. Justice Uday Sinha, a retired Judge of this Court shall look into the various facets of nature of appointments that were given to the writ petitioners with a view to adjudicate the legality of their appointments and continuance in service.
Xxxx xxxx
- (c) All other employees writ petitioners terminated from service would be reinstated only in case the committee records finding in their favour holding their appointment and continuation in service to be legal.
- (p) Such of the employees writ petitioners who would



continue in service during the pendency of the enquiry proceedings before the one man committee would be entitled for payment of salary from the date of this order and till passing of the final order by the one man committee even if the committee would not approve their initial appointment and continuation in service.”

The petitioner was not party to those writ proceedings or in Letters Patent Appeal. The petitioner filed C.W.J.C. No.3838 of 2009 before this Court. The said writ application was allowed by the learned Single Bench on 6.10.2009. L.P.A.No.541 of 2010 was preferred against the said order. The said appeal was allowed on 23.3.2010 in the same terms as L.P.A. No.1623 of 2009 i.e. the judgment since reported as Sohan Roy's case (supra). The order reads as under:

“As we have condoned delay, we are inclined to take up the appeal for admission.

On consent of learned counsel for the parties, it is finally heard.

Be it noted that in similar cases this Court in L.P.A. No.1623 of 2009 on consent had issued certain directions.

Heard Mr. A.K. Chongdar, learned counsel for the State and Mr. Prafull Chandra Jha, learned counsel for the respondents.

It is fairly submitted at the bar that the controversy is covered by order passed in L.P.A. No.1623 of 2009.

Recording such concession, appeal stands



disposed of.”

It is thereafter, the petitioner filed a petition before the one man enquiry committee who has given the report on 28th of March, 2011 finding no illegality in the order of termination based upon termination (Annexure-6). The said order was challenged in a writ application which writ application was dismissed. The Letters Patent Appeal was also dismissed.

Learned counsel for the petitioner refers to an order dated 8th of August, 2011, passed by Hon’ble Supreme Court in Civil Appeal No.6484 of 2011, (Arising out of SLP(C) No.16798 of 2010, Dunni Lal Deepak & Anr. vs. State of Bihar & Ors.) to contend that petitioner has never consented for consideration of the matter of his termination by the one man enquiry committee, therefore, the order passed by the said enquiry committee is without jurisdiction. It is also contended that after the order was passed by Hon’ble Supreme Court in Dunni Lal Deepak’s case (supra), this Court has allowed the appeals filed by the State in a judgment reported as 2015(2) P.L.J.R. 378, (The State of Bihar & Ors. Vs. Krishna Singh), decided on 24.9.2014, though against the said order several Special Leave Petitions are pending before the Hon’ble Supreme Court.

It is also argued that this Court could not have passed an order in the absence of the appellant when the case was called for



hearing on 22nd of June, 2016. Reliance is placed upon a Supreme Court order reported as (2012) 8 SCC 745, Ghanshyam Dass Gupta vs. Makhan Lal.

We have heard learned counsel for the petitioner and find no merit in the present review application. The prime argument is that the petitioner has not consented to submit to the jurisdiction of one man enquiry committee as the enquiry committee was constituted only in respect of the writ applicants who were party in a judgment of this Court since reported as Sohan Roy's case (supra). Firstly, the said contention is not acceptable for the reason that an earlier writ application filed by the petitioner was allowed and an order was passed in L.P.A. No.541 of 2010 in the same terms as the aforesaid judgment, therefore, the directions of this Court in L.P.A. No.541 of 2010 are based upon consent wherein, the petitioner agreed to be governed by the judgment in Sohan Roy's case (supra). Secondly, after the said order was passed, deciding the Letters Patent Appeal, the petitioner has submitted to the jurisdiction of the one man enquiry committee. The writ application was filed when an adverse order was passed against him. Once the petitioner has submitted to the jurisdiction of the committee, presumably in terms of the directions of this Court in an order passed in the Letters Patent Appeal, the petitioner cannot be permitted to now say that he was not



a consenting party. Still further, having submitted to the jurisdiction of the committee, the petitioner cannot now turn around to say that it was involuntary act of the petitioner to appear before the one man enquiry committee.

Still further, the petitioner has not asserted in the writ application that his submission to the jurisdiction of one man enquiry committee was unauthorized and not warranted. Therefore, an order passed by the Hon'ble Supreme Court in Dunni Lal Deepak's case (supra) would not be helpful to the petitioner as we find that the petitioner was a consenting party to submit to the jurisdiction of the one man enquiry committee. He has voluntarily submitted to the jurisdiction of the one man enquiry committee.

The second argument that this Court could not have heard the matter, decided the appeal on merits in the absence of the counsel for the appellant, is again not tenable. The judgment referred to deals with the provisions of Order 41 of the Code of Civil Procedure. The Code of Civil Procedure is not applicable to the writ proceedings in view of Section 141 of the Code of Civil Procedure and as laid down by the Hon'ble Supreme Court in Puran Singh Vs State of Punjab case (1996) 2 SCC 205. Therefore, since the strict rules of the Code of Civil Procedure are not applicable to the writ proceedings, this Court could decide the appeal on merits.



In view thereof, we do not find any merit in the civil review petition. The same is dismissed.

(Hemant Gupta, ACJ)

(Ahsanuddin Amanullah, J)

K.C.jha/-

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