

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.207 of 2011

1. The Bhagalpur National College Shikshettar Karmachari Sangh through its Secretary, Yogendra Mandal, son of Shub Lal Mandal, Bhagalpur National College, Bhagalpur, P.S. University Town & district – Bhagalpur.

2. Niranjana Kumar, son of Late Bhujangi Kumar, resident of mohalla – Viveka Nand colony, Kila Ghat Sarai, P.S. – Tatarpur (Kotwali), Town & District Bhagalpur.

3. Bhupendra Kumar, son of Late Shyam Lal Kumar, Peon (Class IV employee), Bhagalpur National College, Bhagalpur, P.S. University, Town & district Bhagalpur

.... Petitioner/s

Versus

1. Mr. Rajeev Kumar Sinha, the Registrar, T.M. Bhagalpur University, Bhagalpur

2. Dr. K.N. Dubey, the Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur.

3. Mr. S.K. Sinha, the Finance Officer, T.M. Bhagalpur University, Bhagalpur

4. Dr. M.N. Choudhary, the Principal, B.N. College Bhagalpur

5. Mr. Anjani Kumar Singh IAS, the Principal Secretary, Dept. of Human Resources Development, Government of Bihar, New Secretariat, Patna

6. The State of Bihar through its Chief Secretary, Government of Bihar, new Secretariate, Patna, namely, Mr. Anup Mukherjee IAS.

7. The Director, Higher Education, Human Resources Development Department, Government of Bihar, New Secretariate Patna, namely, Mr. J.P. Singh.

.... Respondent/s

with

Miscellaneous Jurisdiction Case No. 3893 of 2011



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1. Sri Nath Choudhary son of Late Satynarayan Choudhary, At-Ramghar, P.S. Kotwali, District Bhaalpur (Peon)
 2. Md. Akbar Ali son of Late Md. Jasim, village – Kilaghat (Sarai) P.S. Kotwali, District – Bhagalpur (peon).
 3. Moti Roy, son of Ram Khelawan Roy At +Post- Jamshi (Machipur), P.S. Lodhipur, District Bhagalpur (Peon)
 4. Md. Badruddoza, S/o Late Md. Maniruddin, R/o village – Rakabganj, P.S. Tatarpur, Post Bhagalpur City, District Bhagalpur, Lal Bearer (Zoology)
 5. Shiv Shankar Choudhary, son of Late Nischal Choudhary, R/o-village – Makandpur, P.S. Nath Nagar, District Bhagalpur (peon)
 6. Deep Narayan Singh, son of Late Karan Singh, R/o- village Dharhara, P.S. Gopalpur, District Bhagalpur (Peon)
 7. Yogendra Prasad Malakar, son of Late Nageshwar Prasad Malakar, village Balua tola, Post Madhusudanpur (Mirzapur) P.S. Madhusudanpur, District Bhagalpur (peon)
 8. Panchu Mandal son of Late Kanhu Mandal, village Nawada, P.S. Kharikh, District Bhagalpur (Peon)
 9. Bilakshan Mandal, son of Late Kanhu Mandal, village Nawada, P.S. Kharikh Bazar, District Bhagalpur (peon)
 10. Gyandeo Prasad Mandal son of Late Bhagirath Prasad Mandal, village +P.O. Ekchari (diyara) District Bhagalpur (Lab. Bearer Psy.)
 11. Shambhu Nath Singh, son of Late Tapeswar Singh, village Karhari (Rajputan Tola), P.S. Mahua, District Vishali (peon)
 12. Chamak Lal thakur, son of Late Bachchu thakur, village Lodipur, P.S. Lodipur, District Bhagalpur (peon)
 13. Biro Yadav, son of Bideshi Yadav, village Raghapur, P.S. Naugachia, District Bhagalpur (Peon)
 14. Bodh Narayan Rajak, son of Late Narsingh Rajak, village Sahibganj, P.S.T.M. University, district Bhagalpur (Animal Catcher)
 15. Md. Doud, son of Late Wali Ahmad, village Naya Bazar, P.S. Kotwali, District Bhagalpur (Peon)
 16. Usha Devi, wife of Late Om Prakash Ray, (Lab Bearer Chemistry), village Kilaghat (sarai) P.S. Kotwali, District Bhagalpur



.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar Sri Anup Mukherjee, Old Secretariate, Patna
2. Shri Anjani Prasad Singh, Principal Secretary, Human Resources Development Department, govt. of Bihar, Patna
3. The Finance Secretary, Rameshwar Singh, govt. of Bihar, Patna.
4. The Director, Higher Education, Sitaram Singh, Human Resources Development Department, govt. of Bihar, Patna
5. The vice Chancellor Dr. K.N. Dubey Tilak Manjhi Bhagalpur University, Bhagalpur.
6. The Registrar, Prof. Chandr Mohan Das, Tilka Manjhi Bhagalpur University, Bhagalpur.
7. The finance Officer, Ashutosh Kumar, Tilka Manjhi Bhagalpur University, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. PURUSHOTTAM KUMAR JHA, ADV.
Mr. NAVJOT YESHU, ADV.
For the Respondent/s : Mr. TEJ BAHADUR SINGH, ADV.
Mr. BRISKETU SARAN PANDEY, ADV.
MR. RAJENDRA KUMAR GIRI, ADV.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 24-08-2017

The present MJC petition has been filed by the petitioners Sangh, alleging non-compliance of the order dated 21.04.2010 passed by this Court in CWJC No. 78 of 2006, whereby and whereunder the respondent-University was issued certain directions.

It is needful to mention at the outset that



the State Government directed the University to prefer a Letters Patent Appeal against the order under contempt. On receipt of such instruction from the State Government, the University preferred an LPA No. 1324 of 2010. The MJC application was already pending when the Letters Patent Appeal was taken up for hearing and came to be disposed of vide order dated 20.12.2011. The operative part of the order passed in LPA No. 1324 of 2010 reads hereunder:-

“In our considered view, when the University regularized the services of the concerned Class-III and Class- IV employees of Bhagalpur National College, it should have indicated that the regularization would be with effect from the date of take over of the college i.e. 05.04.1982. The consequential benefits, in the facts of the case, have rightly been ordered to be calculated with effect from the date the college was taken over after examining individual service records of the concerned employees. There is no question of delay when the writ petition was filed in the year 2006 on account of error in the regularization order dated 15.09.2004.

We find no merit in this appeal. It is accordingly dismissed”.

The University went on to calculate the arrears of petitioner of CWJC No. 78 of 2006 and



submitted the statement of arrears to the State Government vide Letter No. ACC/11367 dated 07.01.2011 along with a formal requisition for the amount which was required for disbursement in that regard.

Pursuant to several orders passed by this Court in the present contempt application, the Director, Higher Education drew the attention of this Court to a letter of the Senior Auditor dated 04.03.2013 addressed to the Registrar, University, as contained in Annexure B to the show cause filed on 06.03.2013 (order no. 16). It was contended in the said show cause that the Auditor has asked for several files and records from the Registrar for the purposes of calculation of actual remaining dues of each and every employee concerned as on the said date, after release of part payment and adhoc payments made earlier from the fund allotted to University under the orders of this Court or otherwise. This Court further directed the Registrar of the university to obtain the details of actual payment made to each and every employee till today from the Principal of the College, verify the same



from the records of the University and make it available to the Senior Auditor for final calculation of the amount payable to each and every employee, who shall submit a consolidated statement to the department for release of the exact amount in favour of the university.

It appears that though an amount of Rs. 3,29,05,223/- was released, in favour of such payments. It appears that on 07.08.2013 (order no.19) a fresh show cause was filed by the Principal Secretary, Education Department wherein it was submitted that in the order of Conversion Committee the department could not find the names of 20 employees as shown in the list, annexed as Annexure-F with the show cause, hence further payment of arrears of such employees has been withheld. It was however, submitted that the rest 53 employees whose names were found with the original conversion documents, their dues have been calculated by the department to obtain the details of the payment of the said 53 employees out of adhoc amount released to the university which will be deducted from the final



calculation of their dues and rest of the amount shall be released in the specific names of the employees. The Additional Advocate General was also directed to produce the original conversion document before this Court and the University was also directed to produce the report of the regularization committee.

The present contempt application took a different turn on 02.04.2014 (order no. 29) where the court which passed the original order in the writ application, came to the considered opinion that the records of the 20 employees of the college, whose identity has been put under the cloud by the State government, should be examined afresh thoroughly and accordingly, authorized Mr. Singh, learned Senior counsel, AAG -7 to suggest a methodology on the next date. However the court held on such date that the pendency of the contempt application would not stand in the way of the authorities of the university in making payment of the current salary of the 20 employees, if they are receiving the grant from the state government on the basis of actual days of their working. It is relevant to mention here that following



the order dated 02.04.2014 the said 20 employees were directed to produce the original documents in support of validity of their appointments before the learned AAG 7 who would be at liberty to call for further records from the Department as well as from the University and shall also be at liberty to obtain further information from the college regarding the said 20 employees.

It appears from the records of the case that ultimately the enquiry which was directed by the court was entrusted to one Mr. Rahul Singh, IAS a Secretary rank officer of the department to hold enquiry in respect of genuineness of the appointment of the rest of the 20 employees of the college. So far as the rest 53 of the employees concerned, this court directed that the University authorities explain as to why full payment of arrears of the 53 employees whose services had been approved by the State Government was not being released, if the funds had been received from the State government by the university. It appears from order dated 13.08.2014 further sum of Rs. 1,05,11,613/- was released to the college with



direction to disburse the amount to the 53 employees whose served were found valid. The said amount was distributed among the said employees by the college. Thus, the issue of compliance of the order with regard to 53 employees whose services were found valid came to a rest and the issue with regard to non-compliance of the order also stood resolved. (order no. 34)

It appears that on 16.09.2014 the petitioners questioned the propriety of the Court for issuance of the fresh Enquiry report by the opposite parties and with regard to certain directions issued by it in the case, especially the permission to review the cases of those whose appointment had been placed under the cloud by the State Government and which could not be substantiated by the University. As such the matter was placed before the another Bench then that which had passed the order under contempt. After traversing through different courts, the matter has come before this Court for further hearing.

It was submitted by learned counsel appearing on behalf of the petitioners that in the report of the committee constituted in pursuance of



direction by this court, the authorities had brought in certain discrepancies and there were mistakes with respect to the names of the appointees which ought to have been corrected by the university, and as the result thereof, the present petitioners have not yet been given their legal dues. As such, a clarification was sought for from the university so that there be no further delay in compliance of the order passed by this court. Furthermore by order dated 06.02.2017 since the clear picture was unavailable to this court, the university was directed to file a comprehensive show cause stating clearly the numbers of sanctioned and vacant posts on the date of takeover of the Bhagalpur National College by the State Government. The University was also directed to bring on record all relevant documents to indicate the bona fide of those persons whose credential were disbelieved by the State Government and the University.

During the course of the proceedings, learned counsel for the petitioner submitted that the action of the State/University in reexamining of the cases of employees/appointees was wholly illegal and



unwarranted and could not be done. It was only open to them, to comply with the order passed by the writ Court in its totality and it was wholly irrelevant as to what report was submitted after the passing of the impugned order. It was submitted by the learned counsel for the petitioners that the report of the Rahul Singh Committee was wholly illegal and sought to introduce new facts.

Referring to the provision of Contempt of Court Act learned counsel for the petitioners brought to the notice of the court as to the plea which can be raised to avoid implementation of the direction contained in the judgment under contempt. Reference has been made to the case of **T.R. Dhananjaya Vs. I. Vasudevan (1995) 5 SCC 619**. Learned counsel submitted that the following discussion contained in the said judgment squarely covers the case of the present petitioners. Paragraphs 10 & 11 of the said judgment reads as follows:-

“10. When this order was passed, what remained for the respondent was only implementation of the order passed by this Court in furtherance of the action taken thereunder by the Corporation. It is now clear that instead of implementing the order, an attempt has been made to circumvent the same and deny the



benefits to the petitioner. As stated earlier, the petitioner is a corporation employee and the stand of the

Government appears to be to give benefit to their employees. So, an attempt has now been made to get into the rule position and to find whether the petitioner is eligible to be considered for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. It is now stated that according to the rules the petitioner would be eligible only as superintending Engineer and not as Chief Engineer. When direction was given in LA No. 3 of 1993, the Government was a party to the proceedings and it was never brought to our notice that the petitioner was not eligible. On the other hand, the Division Bench of the Karnataka High Court upheld the right of the petitioner which became final.

11. *Question is whether it is open to the respondent to take at this stage this volte-face step. It is seen that al through the Government was a party, when the direction was given in LA No. 3 of 1993 filed by the petitioner, it was not brought to our notice that the petitioner was not eligible for promotion, in contradiction with Dasegowda, or any other. When the claim inter se had been adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the order and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the orders passed by this Court. Thus it is clear that the officers concerned have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and willfully, with an intention to defeat the orders of this Court, passed the impugned order.”*

Another judgment cited at the bar is

Prithawi Nath Ram Vs. State of Jharkhand and

Ors (2004) 7 SCC 261. Para 8 of the said judgment

makes the following reading.



“8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for the contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.”

Thus, taking into consideration the rationale adopted, the petitioners contends that the opposite parties are clearly guilty of having violated the order passed by this Court.

It is relevant to mention that this court is also informed vide affidavit dated 06.12.2013 that the State government vide its letter no. 71 dated 13.12.2012 had released to total sanction amount of Rs. 5 crores which was released by the University vide cheque no. 691292 dated 31.01.2013 to the concerned



college for being disbursed amongst the 73 petitioners at the rate of 60.03 percent of total admissible amount. It was also directed by the respondent university to the college that the rest amount apart from the fixed percentage may also be disbursed equally amongst the petitioners. The Principal of the college had also informed the Finance Officer of the University vide its letter no. BNC/ACC-1659 dated 05.02.2013 that the total amount sanctioned and sent to the college had been utilized by the College.

Earlier vide annexure-C and D to the affidavit dated 09.07.2012, the opposite party – university had filed an affidavit contained in office order no. 175 of 2012 giving the names of the employees of the Bhagalpur National College and also the calculation of arrears of salary difference from 5th April, 1982 to February, 2012.

Another supplementary show cause filed on 08.01.2014 stating that though in pursuance of the initial calculation arrived at by the university for an amount of Rs. 9,48,15,864/- for the payment of the employees from 05.04.1982 to February 2012, and



which had already been utilized to an extent by the college as stated above, the State Government asked the university to re-scrutinize the calculation. The university re-scrutinized the claim of arrear with the help of Government auditor and the earlier calculation of Rs. 9,48,15,864/- was reduced to Rs. 8,29,05,223/- only. Furthermore, the government on the basis of report of the conversion committee arrived at a conclusion that out of 73 persons claiming regularization, the names of 20 persons were not found in the conversion committee report and on the said basis it came to a decision that it agreed to make payment of arrears of salary to 53 employees only and the amount of claims was reduced further to Rs. 6,05,71,613/- only and accordingly vide letter no. 52 dated 31.10.2012 the university was directed to utilize a further sum of Rs. 1,05,11,613/- as 5 crores had already been released earlier. The state government also directed the University to recover the amount already paid to those other than the 53 employees to whom payments were made out of the earlier grant of Rs. 5 crores.



It is further important to mention that the enquiry report submitted by Rahul Singh, Secretary, Education Department, government of Bihar which was brought on record along with the second supplementary show cause on behalf of the opposite parties no. 5 and 7 clearly indicated that there was serious mistakes in the report of the Conversion Committee submitted in the year, 1982. It had at best, reports on the actual employees found working in the same college. Even with regard to the 53 persons, there was a discrepancy. It was stated in the report (Annexure-B page 18) that the names of 53 approved was based on 2013 recommendation but on careful examination of the same six of such 53 employees who were considered fit to be absorbed have no post against which they could be regularized and therefore, the decision of the state government of 2013 needed to be modified to the above indicated extent. So far as the 20 matters referred to be enquired into, six were determined to be on similar footing as the 53 others in favour of whom the department had given their approval in 2013 but even out of six, only four could



be considered for absorption for want of availability of sanctioned posts.

Close on the heels of the report filed by the State Government, the petitioner filed his rejoinder to the report contained in Annexure- B inter alia stating that the decision rendered by the court had become final and the LPA court in LPA No. 1324 of 2010 had affirmed the order passed in CWJC NO. 78 of 2006 and no SLP having been preferred against the same, the decision rendered therein is now final and binding and cannot be questioned by anyone. It was thus submitted that the writ court has not granted any liberty to look into the matter of absorption of the members of the petitioners who are 73 in numbers. Thus, action of the State Government authorities in questioning the legality and validity of the absorption of 20 class-III & IV employees is highly contemptuous. In the said rejoinder application the statement was also made by the petitioners that this court ought not to have permitted the State Government to re-examine the matter of the said 20 class – III & IV employees of the college services of whom had been finally absorbed



as such reopening in the given facts of the case was impermissible in view of the Principles of Estoppel and Res judicata. The petitioners had however, appeared before the said committee headed by Shri Rahul Singh, IAS and having acquiesced to the reopening were yet raising serious objection to the report which had gone against them. It was also submitted that in view of the law laid down by the Apex Court in Civil Appeal No 6098 of 1997 which had held that

“in view of the non-obstante clause contained in provision in Section 4 (i) (14), the constraints in Section 35 of the Act which provides for grant of prior approval to the creation and appointment to the posts in the affiliated colleges, will have no application to absorption of existing staff of affiliated colleges taken over by the universities on their conversion in constituent colleges”.

Learned counsel for the petitioners further submitted that as per the law laid down by the apex court in the decision referred above, it was crystal clear that the absorption of the employees of taken over affiliated colleges like the college in hand is within the exclusion domain of the university.

Since the several show cause have been filed in connection with the present cases in which it



has been submitted that the college in question was granted constituent status in the year 1982 wherein 73 employees were found to have been recruited on sanctioned as well as unsanctioned posts. The State Government accepted that 53 employees out of the 73 employees of the college were regularly recruited on sanctioned as well as unsanctioned posts but disputed the claim of rest of the 20 employees. When the matter was brought to the notice of the Court in the present contempt application, this Court directed the State Government to determine the veracity of the claims of the 20 employees. Thereafter, an enquiry was made and vide report dated 28.07.2014 the case of the said 20 employees have been placed before this Court in terms of the Enquiry Report. It was stated that there are minor variations in the name of 20 employees in the college records as mentioned in the report of the Conversion Committee. It was further stated after examining the relevant documents including the Register of the then Governing body of the college concerned as also the Conversion Committee report, the name of 9 employees could be found as per the



report dated 28.07.2014.

With regard to the 6 of those 9 employees, it was further found in the Enquiry report that perhaps 6 employees as mentioned in paragraph-6 of the Enquiry report might have been wrongly entered in the report of the Conversion Committee owing to typographical mistakes. With regard to 11 other employees, there was no mention of their name in the Conversion Committee Report. Thus, only the case of 6 employees could be taken for consideration subject to availability of posts. The Enquiry report of the committee constituted under the direction of this Court thus, give a finding that even out of those 6 employees only 4 employees could be considered for absorption owing to the availability of sanctioned posts.

Learned counsel for the petitioners thus, contended that the opposite parties were not guilty of any laches, disobedience or default on their part as they had seriously taken up the matter and had considered the case of the employees of the concerned college who were entitled to regularization/absorption



of their services from the date of take over of the college. It was further contended that in pursuance of the directions issued by the Contempt Court which was considering its own order passed in the writ application, an enquiry was conducted by the Secretary, Education Department and the report was presented to this Court in sealed cover. The report dated 28.05.2014 has been accepted by this Court which is evident from the order dated 16.09.2014 marked as Annexure- E to the supplementary show cause filed by the opposite parties. Furthermore, it appears from the order no. 145 dated 30.01.2015 and letter no. 864 dated 04.06.2015 issued from the Education Department that the University has been directed to ensure compliance as per the report dated 28.05.2014. Accordingly, the University vide letter dated 07.01.2016 sent to the State Government has annexed a report with regard to the employees who have been found ineligible for absorption and prayed for further consideration.

Learned counsel for the State has relied on a judgment reported in 2014(3)SCC. In the said



citation at paragraph -20, the Court while appreciating that only such directions which are explicit in a judgment or order or are plainly self-contained which should be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. However, while acknowledging at paragraph 19 that the power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts, Act, 1971, it has proceeded to hold at paragraph -20, as such, Paragraph 20 is quoted hereunder for ready reference:-

“..... Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 02.08.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in willful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants. We are of the view that the order dated 02.08.2006 passed in M. George Ravishekeran v. ONGC Ltd. Stands duly implemented.”

Thus, in the considered opinion of this



Court, the orders passed by this Court have been duly complied with in letter and spirit and since alternative direction had been issued by the Court to constitute a Committee to examine the cases of the rest of the employees, it cannot be said that the Opposite parties have acted in willful disobedience of the said order of the Court. All that is required was that the second order is complied with which has been done in letter and spirit as has been spelt out in the case of **Sudhir Basudeva reported in 2014(3) SCC 373**. As such, this Court does not deem it fit to proceed further in the contempt jurisdiction.

The contempt application is thus, dropped.

(Anjana Mishra, J)

Jagdish/-

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