

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.352 of 2016

IN

LPA 1287 of 2012

- =====
1. Ranvesh Kumar, S/o Sri Nageshwar Singh, R/o Village- Sudamapur, P.O. Darha, P.S. Bashar, District- Jamui.
 2. Manoj Kumar Nirala, S/o Ram Prasad Singh, R/o Village- Manikpur, P.O. Dighari, P.S.- Suryagarha, District- Lakhisarai.

.... Petitioners.

Versus

1. The State of Bihar through the Secretary Department of Primary Education, New Secretariat, Patna.
2. The District Teacher's Employment Appellate Authority, Jamui.
3. The District Magistrate, Jamui.
4. The District Superintendent of Education, Jamui.
5. The Block Development Officer, Barhat- Block, District- Jamui.
6. The Block Education Extension Officer, Barhat, District- Jamui.
7. The Mukhiya Gram Panchayat Raj, Darha, District- Jamui.
8. The Panchayat Secretary, Gram Panchayat Raj, Darha, District- Jamui.

.....Respondents/Opposite Parties.

9. Ranvir Kumar, Son of Sri Rajendra Prasad, R/o Village & P.O. Numar, under Barhat Panchayat P.S. Barhat, District- Jamui.
10. Suman Kumar, S/o Sri Satendra Kumar, R/o Village- Bihari Bambai Colony, P.O. & P.S. Jamui, District- Jamui.

.... Appellants/Opposite Parties.

=====

Appearance :

For the Petitioners : Mr. Rajeev Kumar Singh, Advocate.
For the Respondent Nos.7 & 8 : Mr. Mukul Jee, Advocate.
For the Respondent Nos.9 & 10 : M/s. Awadhesh Kumar and Rajesh Kumar Sinha, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

AND

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 01-02-2018

Heard learned counsel for the petitioners, learned counsel
appearing for the respondent nos.7 and 8 and learned counsel



appearing for the private respondent nos.9 and 10.

2. Originally, private respondent nos.9 and 10 filed C.W.J.C. No.10901 of 2011 for implementation of the orders dated 06.04.2011 and 24.01.2011 passed vide Memo Nos.185 and 75 respectively in Case No.353 of 2010 by the District Teacher's Employment Appellate Authorities, Jamui. The above stated C.W.J.C.No.10901 of 2011 was dismissed due to non-impleading the necessary parties vide order dated 22.02.2012, which was challenged by the private respondents in L.P.A. No.1287 of 2012. The above state L.P.A. No.1287 of 2012 was allowed vide Judgment dated 07.07.2015 on the ground that the above stated C.W.J.C. No.10901 of 2011 was filed only for implementation of the orders of the Tribunal and the petitioners of this civil review petition were not the necessary party to the aforesaid writ petition. Subsequently, the petitioners filed Civil Review No.190 of 2015 for review of the Judgment dated 07.07.2015 passed in L.P.A. No.1287 of 2012. The above stated civil review petition was dismissed vide order dated 09.12.2015, which was challenged before the Hon'ble Apex Court in Petition for Special Leave to Appeal CC No.8174 of 2016 by the petitioners.

3. It would appear that at the time of hearing of the aforesaid Petition for Special Leave to Appeal, it was brought to the notice of the Hon'ble Apex Court that the petitioners had filed C.W.J.C. No.3171 of 2011 against the orders of the Tribunal and the



above writ petition was pending at the time of passing order dated 07.07.2015 in L.P.A. No.1287 of 2012 and taking note of the aforesaid fact, the Hon'ble Apex Court granted liberty to the petitioners to seek for appropriate review of the impugned order dated 07.07.2015 passed in L.P.A. No.1287 of 2012. Accordingly, the petitioners filed the present review petition for review of the impugned Judgment dated 07.07.2015 passed in L.P.A. No.1287 of 2012.

4. Learned counsel appearing for the petitioner challenged the impugned Judgment dated 07.07.2015 passed in L.P.A. No.1287 of 2012 on two counts; firstly, he submitted that at the time of hearing of L.P.A. No.1287 of 2012, the private respondents did not bring this fact to the notice of the L.P.A. Court that C.W.J.C. No.3171 of 2011 had been filed on behalf of the petitioners challenging the orders of the Tribunal and that was the reason the L.P.A. Court observed in Judgment dated 07.07.2015 that no one had challenged the correctness of the orders of the Tribunal. Secondly, he challenged the impugned Judgment dated 07.07.2015, submitting that the L.P.A. Court failed to take note of this fact that the Appellate Tribunal modified its previous order dated 24.01.2011 passing a fresh order dated 06.04.2011 and gave liberty to the appointing authority to consider the case of the petitioners as well as the private respondent nos.9 and 10 and in compliance of the aforesaid modified order of the Tribunal, notices



were sent to the petitioners as well as the private respondents and the petitioners appeared before the appointing authority but the private respondents failed to appear inspite of valid service of notices upon them. He further submitted that, in the meantime, the private respondents filed C.W.J.C. No.10901 of 2011 before this Court concealing the material facts and when the material facts were brought to the notice of the Writ Court, the Writ Court dismissed the writ petition, which was, subsequently, challenged before the L.P.A. Court and the L.P.A. Court without considering the above stated material facts allowed L.P.A. No.1287 of 2012 and, therefore, it is apparent error on the face of the record.

5. On the other hand, learned counsel appearing for the private respondent nos.9 and 10 submitted that C.W.J.C. No.3171 of 2011 was not pending at the time of passing order dated 07.07.2015 in L.P.A. No.1287 of 2012 and as a matter of fact, the aforesaid C.W.J.C. No.3171 of 2011 was dismissed for default on 15.10.2011, which is evident from perusal of paragraph-31 of the present review petition. He further submitted that when the Judgment dated 07.07.2015 was passed in L.P.A. No.1287 of 2012, the petitioners filed M.J.C. No.1959 of 2015 for restoration of C.W.J.C. No.3171 of 2011 and the above stated M.J.C. No.1959 of 2015 is still pending. He further submitted that the aforesaid fact was not brought to the notice of the Hon'ble Apex Court and as a matter of fact, it was



argued before the Hon'ble Apex Court that C.W.J.C. No.3171 of 2011 is still pending though the aforesaid C.W.J.C. No.3171 of 2011 had already been dismissed for non-prosecution in the year 2011 and uptil now, the aforesaid C.W.J.C. No.3171 of 2011 has not been restored. He further submitted that so far as the modified order of the Tribunal is concerned, it is obvious that by previous order, the Tribunal had directed for dismissal of one Dharmendra Kumar Singh and Ranvesh Kumar but, subsequently, it came to the notice of the Tribunal that Manoj Kumar Nirala (petitioner no.2) had lesser mark than Dharmendra Kumar Singh and, thereafter, the Tribunal modified its previous order and, therefore, in the aforesaid circumstance, the Tribunal had never granted liberty to the appointing authority to consider the case of the private respondents as well as the petitioners. Moreover, he, further, submitted that the Hon'ble Apex Court had remanded the matter only on the ground that the writ petition challenging the orders of the Tribunal was pending.

6. Having heard the contentions of both the parties, we went through the records of the case. We find that the Tribunal vide its earlier order directed the appointing authority to dismiss the petitioner no.1 and one Dharmendra Kumar Singh and appoint the private respondents in their places as they had higher merit than the petitioner no.1 and Dharmendra Kumar Singh, however, subsequently, it was brought to the notice of the Tribunal that the



petitioner no.2 had lesser merit than Dharmendra Kumar Singh and, thereafter, the Tribunal modified its previous order, directing the appointing authority to consider the case of the petitioners as well as the private respondent nos.9 and 10.

7. It has been argued on behalf of the petitioners that the previous order of the Tribunal has already merged with its subsequent order and, therefore, the appointing authority got jurisdiction for consideration of the case of the parties but we are not in agreement with the aforesaid submission because in previous order, the Tribunal directed the dismissal of those candidates who had lesser marks than the private respondent nos.9 and 10 and, subsequently, the Tribunal came to notice that one Dharmendra Kumar Singh had higher marks than the petitioner no.2 but the dismissal order has been passed in respect of Dharmendra Kumar Singh and, then, the Tribunal modified its previous order, directing the appointing authority for consideration of the case of the petitioner no.2 and others and, therefore, we are of the opinion that even if the Tribunal modified its previous order passing subsequent order, then also, the previous order of the Tribunal has not lost its force and the appointing authority was bound to take steps for passing the dismissal order of those candidates, who had lesser marks than the private respondents and, thereafter, to appoint the private respondents on the same posts.

8. It would also appear from perusal of the record that the



C.W.J.C. No.3171 of 2011 was neither pending at the time of passing the impugned Judgment dated 07.07.2015 nor at the time of passing the order of the Hon’ble Apex Court in Petition for Special Leave to Appeal CC No.8174 of 2016.

9. Admittedly, the M.J.C. No.1959 of 2015 was filed after passing the Judgment in L.P.A. No.1287 of 2012. No doubt, the said M.J.C. No.1959 of 2015 was pending at the time of passing order of the Hon’ble Apex Court in Special Leave to Appeal CC No.8174 of 2016 but mere filing of the M.J.C. No.1959 of 2015 is not amount to restoration of C.W.J.C. No.3171 of 2011. Moreover, the subsequent event can never be a ground of the review of previous order.

10. Therefore, on the basis of the aforesaid discussions, we do not find any merit in the instant Review Petition. Accordingly, the same stands dismissed.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.02.2018.
Transmission Date	NA

