

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1673 of 2015
IN
Civil Writ Jurisdiction Case No. 795 of 2013**

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1. Md. Murshid Alam Son of late Abdul Majeed Resident of Mohalla-Panchaiti Akhara, P.S Kotwali, PS. Kotwali, District Gaya.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Department, Govt. of Bihar, Patna.
2. The Director (Administration)- Cum- Additional Secretary, Education Department, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.
4. The District Education officer, Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar, Adv.
Mr. Amarendra Narayan, Adv.
Mr. J.K.Verma, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh- GA3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 26-03-2018

Heard Mr. Amarendra Narayan, learned counsel for the petitioner and Mr. Vinay Kirti Singh, G.A.2 for the State.

This appeal under Clause 10 of the Letters Patent Appeal of the High Court of Judicature at Patna arises from a judgment and order of the learned Single Judge passed in C.W.J.C. No. 795 of 2013 dated 21.1.2014/27.2.2015 whereby the writ petition has been dismissed. The learned Single Judge after hearing the parties dismissed the writ



petition on 21.1.2014 on the following terms:

"Heard learned counsel for the parties.

At the outset, learned counsel for the petitioner had wanted this case to be adjourned for awaiting the result of MJC No. 280 of 2012.

This Court, having examined the nature of order dated 27.9.2011 in CWJC No. 16967 of 2011 out of which the aforesaid contempt application, MJC No. 280 of 2012 arises, does not feel any necessity to adjourn the hearing of this case as nothing actually would turn on the outcome of the contempt application so far it relates to the result of this writ application.

In the present case, the order of the competent authority cancelling the very appointment of the petitioner on the post of Teacher in a Basic school is in question whereas the subject matter of the aforesaid writ application, namely, CWJC No. 16967 of 2011 disposed of on 27.9.2011 and the resultant contempt application, MJC No. 280 of 2012, is totally confined to the claim of promotion of the petitioner on the basis of his being a validly appointed teacher in a basic school. Thus, in the considered opinion of this Court, the result of this writ application may have an important bearing on the outcome of the pending contempt application but vice versa is not true.

This Court, therefore, has also heard learned counsel for the parties on merit of the case and does not find any flaw in the impugned order passed by the competent authority which is not only a speaking order but also takes into account all the relevant facts and law including the impact of observations and directions given by this Court in the earlier three writ petitions and two contempt applications filed by the petitioner.

This Court, therefore, must hold the present writ application to be wholly without merit. It is, accordingly, dismissed and the reasoned order, in support of the aforesaid conclusion of dismissal of this writ application, shall follow on production of the records of CWJC No. 11755 of 2001, CWJC No. 7886 of 2002, MJC No. 3047 of 2005, CWJC No. 16967 of 2011 and MJC No. 280 of 2012."



The last paragraph of the order would explain that the reasons which forms the basis for dismissal of the writ petition was not available when the writ petition was dismissed rather has been gathered by the learned Single Judge subsequently on its production after 11 months of passing of the dismissal order which is transpired from his observation made in the reasoned order passed on 27.2.2015 which is more than 13 months of the dismissal order and which reads:

“2. At the outset, let it be noted that the records of CWJC No. 11755 of 2001, MJC No. 3047 of 2005, MJC No. 280 of 2012 and CWJC No. 16967 of 2011 was made available to this Court by the office only on 19.12.2014 whereas the records of CWJC No. 7886 of 2002 was made available on 7.1.2015 and this Court, having perused all of them, is now recording its reasons.”

It is obvious that the issue has been prejudged for even though the learned Judge has formed his opinion on 21.01.2014 the reasons for the same has been gathered from the records produced subsequently.

For the reasons so discussed, we are persuaded to accept the grounds raised by the appellant to interfere with the conclusion drawn by the learned Single Judge in his judgment and order passed on 21.01.2014 which discusses no reasons and which reasons have been assigned more than 13 months later on 27.1.2015 on the basis of such records which was not available for discussion before the parties



earlier.

Having heard learned counsel for the parties and for the reasons so discussed, the judgment and order dated 21.01.2014 together with the reasoned judgment dated 27.2.2015 passed in C.W.J.C. No. 795 of 2013 cannot be upheld and is accordingly quashed and set aside and the writ petition is remitted to the writ Court for its consideration afresh and its disposal in accordance with law.

We make it very clear that this Court has not applied its mind on the merits of the case rather it is on the procedure adopted that this Court has been persuaded to record its opinion.

The appeal is allowed but with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Bibhash

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