

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2 of 2015

IN

Civil Writ Jurisdiction Case No. 20958 of 2013

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Kalicharan Das Son of Sri Surendra Nath Das Resident of Village - Abadpur, P.S.
Abadpur, District - Katihar.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary Department of Human Resource Development Department Government of Bihar, Patna.
2. The Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Teacher Employment Appellate Authority, Katihar.
5. The District Education Officer, Katihar.
6. The Block Development Officer, Barsoi, District - Katihar.
7. The Block Education Officer, Barsoi, District - Katihar.
8. The Mukhiya Gram Panchayat Shivanandpur, Barsoi, Katihar.
9. The Panchayat Secretary, Gram Panchayat Shivanandpur, Barsoi, Katihar.
10. Saurabh Kumar Son of Sri Ram Lal Ray R/o Village - Rampur, P.S. Mufasil Kabhar, District - Katihar.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Md. Helal Ahmad

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 02-04-2018

Challenge in the present Letters Patent Appeal is to
the order dated 10.11.2014 passed by learned Single Judge in
CWJC No. 20958/2013.

2. By the impugned order, the learned Single Judge
has been pleased to dismiss the writ application preferred by
the present appellant for setting aside the order dated 23rd of
June, 2009 passed by the District Teachers Employment



Appellate Authority, Katihar (respondent no. 4) in appeal Case No. 81/2009.

3. The grievance of the writ petitioner-appellant is that by passing the impugned order the learned writ court has left him remediless. It is further submission of the appellant that from a bare perusal of the order dated 27.09.2013 passed in CWJC No. 16915/2010 by the learned writ court, it would appear that in the said case one Sourabh Kumar had approached this court through a writ application with a grievance that the order dated 23rd of June, 2009 (Annexure-1) passed by the District Teachers Employment Appellate Authority in Appeal No. 81/2009 which was filed by him is not being implemented by the concerned Mukhiya and Panchayat Secretary, Gram Panchayat, Shivanandpur, District – Katihar, whereby the petitioner was directed to be appointed as Panchayat Teacher. In the said case a counter affidavit was filed on behalf of the respondent no. 5, 6 and 7 bringing on record copy of the order dated 5th January, 2010 whereby the order dated 23rd of June, 2009 was found reviewed and withdrawn on merits.

4. At this stage, the petitioner Sourabh Kumar challenged the authority of the District Teachers Employment



Appellate Authority to review its own order, as according to him, there was no provision granting power of review under the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006, whereunder the appellate authority could have reviewed its own order.

5. In these circumstances, the learned writ court found that the order dated 23rd June, 2009 in Appeal Case No. 81/2009 is a quasi judicial order which has not been interfered with and set aside by a competent court, the respondent nos. 8 and 9 were directed to give effect to the said order unless any order of superior court is passed reversing the order. It would appear from the last paragraph of the order dated 27.09.2013 passed in CWJC No. 16915/2010 that this appellant, who was respondent no. 10 in the said writ application, had made it very clear in course of hearing of the said writ application itself that he would be assailing the order dated 23rd June, 2009. He had also informed the writ court that the copy of the order dated 23rd June, 2009 had not been received by him so far, the learned writ court took note of the submission and observed *“Be that as it may, as on date, the order, as contained in Annexure-1 remains in operation”*.

6. In the aforesaid circumstances when the appellant



herein preferred the writ petition No. 20958/2013 challenging the order dated 23rd June, 2009, the learned writ court dismissed the writ application holding that the order passed in CWJC No. 16915/2010 so long stands and remains, Annexure-1 cannot be interfered with by another co-ordinate Bench.

7. Learned counsel representing the appellant has assailed the impugned order submitting that the learned writ court could not appreciate that the petitioner-appellant cannot be left remediless, moreover, the legality and validity of the order dated 23rd June, 2009 had not been tested before the learned writ court in CWJC No. 16915/2010, and therefore, the order passed in the said writ application would not come in the way of learned writ court in considering the submissions while challenging the order dated 23rd of June, 2009.

8. On the other hand, learned counsel representing the private respondent no. 10 submits that the learned writ court has rightly dismissed the writ application in view of the fact that in the writ application being CWJC No. 16915/2010, the learned writ court had directed for implementation of the order dated 23rd of June, 2009.

9. Having considered the rival submissions, we find that learned counsel representing the appellant is correct



in his submission that the petitioner cannot be rendered remediless, moreover in the facts and circumstances of the present case, we clearly find that in CWJC No. 16915/2010, while disposing of the same, the learned writ court had not at all gone into the merit of the order dated 23rd June, 2009, passed by the appellate authority and this appellant had made it very clear in the writ court itself that he would be challenging the order passed by the appellate authority.

10. In these circumstances, the learned writ court is not justified in rejecting the writ application on the ground that so long as the order passed in CWJC No. 16915/2010 stands and remains, the order dated 23rd of June, 2009 cannot be interfered with. We are, with all respect, unable to uphold the order of learned Single Judge. The petitioner has a right to seek his remedy in accordance with law and if he has preferred the writ application challenging the order, as stated above, the same is required to be heard and be disposed of on its own merit.

11. In view of the discussions hereinabove, we set aside the impugned order dated 10.11.2014 passed by learned Single Judge in CWJC No. 20958/2013 and restore the writ application to its original file which will be listed before the



learned writ court as per roster for consideration on its own merit. This court has neither been addressed on the merit of the impugned order nor we have expressed any opinion as regards the impugned order.

12. The Letters Patent Appeal is allowed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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