

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3533 of 2017

IN

LPA 961 of 1998

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Arun Kumar Yadav, S/o Late Sadanand Yadav, at+ P.O. - Lakshmipur, P.S. Jama,
District Via Basukinathdam, District Dumka, Jharkhand.

.... Petitioner/s

Versus

1. Shree Vivek Kumar Singh, Chairman, Bihar State Pollution Control Board,
Parivesh Bhawan, Industrial Area Patliputra, Patna, Bihar.
2. Shree Alok Kumar, Member Secretary, Bihar State Pollution Control Board,
Parivesh Bhawan, Industrial Area Patliputra, Patna, Bihar.
3. Shree Tripurari Sharan, Principal Secretary, Environment and Forest
Department, Government of Bihar, Sinchai Bhawan, Patna- 15, Bihar.
4. Shree Sanjay Kumar Suman, Member Secretary, Jharkhand State Pollution
Control Board, T.A. Building Dhurwa, Ranchi, Jharkhand.

.... Respondent/s

With

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Miscellaneous Jurisdiction Case No. 3269 of 2017

IN

LPA 960 of 1998

- =====
1. Dilip Kumar Jha, Son of Late Shubh Chandra Jha, resident of Mohalla- House
Number 19 Road Number-1B, New Patliputra Colony, Police Station-
Patliputra, District- Patna.
 2. Arun Kumar, Son of Shree Bishwa Bharan Kumar, resident of Village + P.O. -
Sonebarsa, Police Station- Bihapur, District- Bhagalpur, Present Address.-
resident of Mohalla- 56 set, Kumhar Toli, Police Station- Doranda, District-
Ranchi, State- Jharkhand.

.... Petitioner/s

Versus

1. Shree Vivek Kumar Singh, Chairman, Bihar State Pollution Control Board,
Parivesh Bhawan, Industrial Area Patliputra, Patna, Bihar.
2. Shree Alok Kumar, Member Secretary, Bihar State Pollution Control Board,
Parivesh Bhawan, Industrial Area Patliputra, Patna, Bihar.
3. Shree Tripurari Sharan, Principal Secretary, Environment and Forest
Department, Government of Bihar, Sinchai Bhawan, Patna- 15, Bihar.
4. Shree Sanjay Kumar Suman, Member Secretary, Jharkhand State Pollution
Control Board, T.A. Building Dhurwa, Ranchi, Jharkhand.

.... Respondent/s

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Appearance :

(In MJC No.3533 of 2017)

For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Adv.
Mr. Binod Kumar Yadav, Adv.

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

For the Respondent-Board: Mr. Shivendra Kishore, Sr. Adv.

(In MJC No.3269 of 2017)

For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Adv.



Mr. Anil Kumar, Adv.
For the Respondent/s : Mr. Shivendra Kishore, Sr. Adv.
Ms Binita Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 09-10-2018

In each of the two contempt applications which have been heard analogous, the petitioners complain of willful disobedience by the respondent-opposite parties in abiding by the specific directions in the common judgment and order dated 21.02.2007 of the Division Bench passed in LPA No.961 of 1998 and LPA No.960 of 1998 respectively, a copy of which is enclosed at Annexure 1 to the respective contempt applications.

Mr. Raj Kishore Prasad Singh, learned counsel has appeared for the petitioners along with the Advocate on record in each of the contempt applications to canvass that the judgment and order of this Court has not been followed nor steps have been taken in compliance thereof.

The plea has been contested by Mr. Shivendra Kishore, learned senior counsel appearing for the Bihar State Pollution Control Board (hereinafter referred to as 'the Board') who submits that the two contempt applications are misconceived because no relief has been granted to these petitioners by the Division Bench and thus there can be no issue of either contempt or failure of



compliance by 'the Board'. Similar opinion is voiced by the counsel appearing for the State in each of the two contempt applications.

On being asked to substantiate his contentions in view of the clear rebuttal by the counsel for the opposite parties to the complaint made, Mr. Singh, learned counsel appearing for the petitioners has referred to the judgment and order of the learned Single Judge passed on the writ petitions enclosed at Annexure 2 to the respective contempt applications to submit that even after finding flaw in the selection process and directing the 'the Board' to hold new selection process in accordance with law and after complying with the statutory rules that the learned Single Judge quashed the termination order of the private respondents who were selected in pursuance of the selection process in question as well as the termination order of the petitioners. It is canvassed that this order of reinstatement albeit on ad-hoc basis has not been complied with although the judgment and order of the learned Single Judge has been upheld by the Division Bench vide judgment and order at Annexure 1 as manifest from paragraph 11 of the judgment of the Division Bench which goes to uphold the judgment under appeal.

According to Mr. Singh, learned counsel appearing for the petitioners, since the judgment and order of the learned Single Judge has been upheld, it would alongside uphold the order of reinstatement but which direction has not been carried out.



Mr. Shivendra Kishore, learned senior counsel appearing for the 'Board' while opposing the contempt applications has submitted that a rather distorted position is being canvassed before this Court and the correct sequence of event would demonstrate that no relief at all was given to these petitioners. According to Mr. Shivendra Kishore, learned senior counsel, these petitioners were already in the employment of the 'Board' on ad-hoc basis, when an advertisement was published on 19.07.1993 for recruitment of Assistant Environmental Engineers. The petitioners and private respondents applied and in the process a merit list was prepared in which the names of the petitioners did not figure. The 'Board' issued notification for appointment of all those whose names appeared in the merit list. Since the petitioners had participated in the process of selection but could not succeed that vide notification dated 02.11.1996 the services of the petitioners were terminated. Feeling aggrieved while the petitioner Arun Kumar Yadav filed CWJC No.12308 of 1996, the two petitioners in the second contempt application preferred CWJC No.11897 of 1996 seeking a declaration that the entire selection process was illegal.

Learned counsel with reference to the opinion present at paragraph 74 of the judgment of the learned Single Judge has submitted that the learned Single Judge found illegality in the selection process and thus quashed the same but allowed the private



respondents who had been selected in the process, to continue on their post on ad-hoc basis. A direction was also issued to the 'Board' to hold fresh selection in accordance with law and alongside the petitioners were also directed to be reinstated on ad-hoc basis. In reference to paragraph 75 of the judgment he submits that the ad-hoc appointment was to continue for a period not exceeding four months and/or until the selection process is completed, whereafter the appointment would come to an end. In the selection so directed the private respondents as well as the petitioners were allowed to participate.

He submits that the 'Board' preferred appeal against the judgment and order of the learned Single Judge which was also questioned by some others. It is submitted that the appeals were admitted for hearing on 24.09.1998 and by the same order the Division Bench allowed the selection process to continue but the select list was to be kept in abeyance until final outcome of the appeals. It is submitted that an interlocutory application was filed in the pending appeal by the 'Board' bearing I.A. No.6609 of 2000 seeking modification in the order dated 24.09.1998 in view of the developments that had taken place in the meanwhile. The Court was informed that the selection process was completed and the select list was kept in a sealed cover. It is argued that the issue of ad-hoc appointment was also taken note of by the Division Bench while



considering the interlocutory application and vide order passed on 19.12.2000, liberty was granted to the 'Board' to make appointment in order of merit from the select list with a view to end the ad-hoc arrangement. The appointment, however, was made subject to approval by the State Government and result of the Letters Patent Appeal.

It is argued that a contempt application was initially filed by the petitioners herein giving rise to MJC No.2824 of 1998 and MJC No.2776 of 1998 before the learned Single Judge which was dismissed in view of the pending appeals and the order passed by the Division Bench on 19.12.2000. Learned counsel in reference to the judgment of the Division Bench at Annexure 1 has referred to paragraph 19 to submit that the ad-hoc appointment of those earlier selected and the petitioners allowed by the learned Single Judge was quashed by the Division Bench vide order passed on 21.02.2007. Feeling aggrieved by the judgment that the private respondents whose appointment had been put to question by these petitioners, moved the Supreme Court in SLP (Civil) No.9268 of 2007 and the Supreme Court stayed the judgment and order of the Division Bench on 02.02.2009.

It is argued that the petitioners herein never moved the Supreme Court rather the petitioner Dilip Kumar Jha filed another contempt bearing MJC No.1399 of 2007 to inform the Division



Bench that the judgment and order had been stayed and whereupon the contempt application was disposed of with the liberty to move on disposal of the Supreme Court matter. He informs that the Special Leave Petition preferred by private respondents giving rise to Civil Appeal No.630 of 2009 was disposed of allowing the reinstatement of the appellants exclusively and not the petitioners. He thus submits that where the ad-hoc arrangement made by the learned Single Judge was quashed by the Division Bench and even in the selection process which ensued following the order of the learned Single Judge, did not result in appointment of the petitioners herein, there is neither any contempt nor do the petitioners have any cause of action.

We have heard learned counsel for the parties and we have perused the records. The exhaustive submission of Mr. Shivendra Kishore, learned counsel appearing for the 'Board' would confirm that the two contempt applications are wholly misconceived and deserves rejection outrightly. The argument advanced by Mr. Singh, learned counsel appearing for the petitioners in support of the two contempt applications entirely rests on the judgment of the learned Single Judge present at paragraph 74 read alongside the finding recorded by the Division Bench at paragraph 11 of the judgment, a copy of which is enclosed at Annexure 1 to the contempt application. It has been rightly argued



by Mr. Kishore that the foundation of the present proceedings lies on a distorted interpretation of the Division Bench judgment.

A plain reading of paragraphs 10 and 11 of the judgment would clarify that the Division Bench taking note of the procedural violation committed by the 'Board' in not taking prior permission of the State Government before initiating the selection process, has upheld the judgment of the learned Single Judge in so far as he has quashed the selection process on procedural illegality. This confirmation of the finding of the learned Single Judge at paragraph 11 is being expanded by Mr. Singh, learned petitioners' counsel to cover the relief of reinstatement granted by the learned Single Judge as well but all that we can observe herein is that the argument advanced by Mr. Singh in support of the prayer for contempt for alleged violation of the order of reinstatement, is rather innovative and is only taken for rejection in view of the point specific adjudication by the Division Bench on the order of reinstatement passed by the learned Single Judge whereby the Division Bench has proceeded to quash the order of reinstatement passed in favour of the private respondents as well as the writ petitioners. Paragraph 19 of the judgment itself is sufficient to conclude that the two contempt applications are thoroughly misconceived because of the two directions issued by the learned Single Judge viz. reinstatement of the private respondents/writ petitioners; and holding a fresh



selection process in accordance with law, while the Division Bench allowed holding of the selection process as directed by the learned Single Judge at paragraph 11, the order of reinstatement passed in favour of the writ petitioners and the private respondents was quashed vide opinion present at paragraph 19 and accordingly the appeals were disposed of.

The situation for the petitioners is even worse because the strength drawn by the petitioners from paragraph 74 of the judgment of the learned Single Judge to institute the contempt proceedings on grounds that their ad-hoc appointment has not been restored as directed, even this arrangement has come to an end by the order dated 19.12.2000 passed by the Division Bench on I.A. No.6609 of 2000 when the Division Bench directed the 'Board' to proceed with the select list kept in sealed cover and make appointment in order of merit with a view to end the ad-hoc arrangement.

The order of the Division Bench dated 19.12.2000 on I.A. No.6609 of 2000 which put an end to the ad-hoc arrangement, merged in the final order of the Division Bench passed on the batch of appeals on 21.02.2007 at Annexure 1 when at paragraph 19 of the judgment the Division Bench quashed the order of the learned Single Judge in directing reinstatement on ad-hoc basis.

In our opinion even the Supreme Court order passed in



the case of private respondents who moved the Supreme Court against the judgment and order of the Division Bench in Civil Appeal No.630 of 2009 does not come to the aid of the petitioners because the order of reinstatement is restricted to the appellants alone.

In the circumstances discussed and as already observed the contempt applications are absolutely misconceived and are dismissed accordingly.

(Jyoti Saran, J)

(Nilu Agrawal, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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