

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.11 of 2015

IN

Civil Writ Jurisdiction Case No. 23465 of 2011

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Binita Kumari, W/o Awadh Kishore Singh, Resident of Village- Saghar, P.O. Maghar, P.S. Bhagawanpur Hat, District Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
3. The Collector, Siwan.
4. The District Program Officer (Establishment), Siwan.
5. The Block Development Officer, Bhagwanpur Hat Block, District- Siwan.
6. The Block Education Extension Officer, Bhagwanpur Hat Block, District Siwan.
7. The Mukhia, Gram Panchayat Raj, Saghar Sultanpur Dakshini, Bhagwanpur Hat Block, District- Siwan.
8. The Panchayat Secretary, Gram Panchayat Raj, Saghar Sultanpur Dakshini, Bhagwanpur Hat Block, District Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate

For the Respondent/s : Mr. Dhrujati Kumar Prasad, GP-14

For the Private Respondent : Mr. Krishna Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-02-2018

This application under Article 226 of the Constitution of India has been filed for review of the judgment and order dated 18.6.2014 passed by Hon'ble Mr. Justice Navin Sinha (as his Lordship then was) in CWJC No.23465 of 2011 (Mithila Kumari vs. The State of Bihar), whereby the writ petition was disposed of with a direction to the Principal Secretary, Department of Education to enquire into the matter and pass appropriate orders in accordance with law within a period of 2 months of the receipt/production of a copy of the order and until such time status-quo was directed to be



maintained between the parties.

Some uncontested facts leading to the Review Petition is that following a selection process initiated in which the review petitioner as well as the opposite party-writ petitioner herein participated, the review petitioner was appointed as Panchayat Teacher on 30.11.2006. Her services was terminated ex-parte on 3.4.2007. CWJC No.9219 of 2007 was filed by the review petitioner questioning her termination and during the pendency of the writ petition she was reinstated on 30.10.2007 but the fact was not disclosed to the Bench and as a consequence CWJC No.9219 of 2007 was allowed by the writ Court vide judgment and order passed on 19.2.2008.

On the other hand, following the termination of the review petitioner that the opposite party- writ petitioner was appointed on 4.4.2007. She joined her post on 5.4.2007. The opposite party- writ petitioner fell ill and took leave but after recouping from illness when she went to join the post, she was not allowed to join which led to filing of CWJC No.2040 of 2008. A coordinate Bench of this Court taking note of the fact that although the writ petition so filed by the private opposite party herein had remained pending since 24.1.2008 and yet until 25.3.2009 no counter affidavit was filed, allowed the writ petition and directed the private opposite party herein to assume her duties vide judgment and order dated



25.3.2009.

The resultant effect of the orders passed on the writ petition so filed by the review petitioner and the private opposite party herein was that there were two claimants for the same post. This led to the filing of CWJC No.23465 of 2011 by the opposite party herein for a direction to the respondents to reinstate her on the post of Panchayat Shikshak after setting aside the selection process of the review petitioner herein who according to her, had been illegally appointed in her place during her sick leave. This Court taking note of the peculiarity of the contest remitted the matter to the Principal Secretary, Education Department to examine the contesting claims and pass appropriate orders in accordance with law.

Feeling aggrieved the review petitioner preferred LPA No.1154 of 2014 but sought permission to withdraw with liberty to file an application for review of the judgment and order in appeal. The Division Bench while disposing of the appeal as withdrawn, gave liberty to the appellant-review petitioner to file review and hence the present review application.

Mr. Harsh Anuj, learned counsel has appeared for the review petitioner, Mr. Dhrujati Kumar Prasad, learned Government Pleader No.14 has appeared for the State and Mr. Krishna Kant Singh, learned counsel has appeared for the private opposite party



herein who was the petitioner in the writ petition.

The only issue which has been raised by Mr. Harsh Anuj, learned counsel appearing for the review petitioner to pray for review is, that the judgment and order under review amounts to conferring jurisdiction on the Principal Secretary, Human Resources Department which in fact did not vest in him under the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules') as amended from time to time. According to Mr. Anuj, the power of hearing any appeal arising from any appointment made under 'the Rules' stood vested in the appellate authority constituted by the State Government vide notification bearing No.3148 dated 25.8.2008 under rule 18 of 'the Rules' and thus the matter could not have been remitted to the Principal Secretary, Human Resources Department for adjudication on the inter-party rights since he lacked jurisdiction to sit in appeal over any such dispute.

While accepting the participation in the proceedings so conducted by the Principal Secretary, Human Resources Department he submits that a mere participation by the review petitioner without raising objection would make no difference in the legal position. According to Mr. Anuj, neither the High Court under Article 226 of the Constitution of India could confer a jurisdiction in the Principal Secretary which was de-hors the statutory



provisions nor a consent by the review petitioner or her participation would make a difference.

In support of the submission that jurisdiction cannot be conferred on any authority either in exercise under Article 226 of the Constitution or by consent, learned counsel has referred the following judgments:

- (1) **2014 (2) PLJR 665 (FB) (Kalpana Rani Vs. State of Bihar) paragraph 96.**
- (2) **2013 (4) PLJR 436 (State of Bihar vs. Bihar Human Rights Commission), paragraph 35.**
- (3) **(2008)2 SCC 350 (Chief Engineer, Hydel Project vs. Ravinder Nath), paragraphs 26 and 28.**
- (4) **(2010)9 SCC 437 (Kalabharati Advertising vs. Hemant Vimalnath Narichania), paragraph 29.**

In support of his submission that the issue of jurisdiction can be raised at any stage learned counsel has relied upon a Full Bench decision of this Court reported in **2015(4) PLJR 328 (High Court of Judicature at Patna vs. K.K. Chaubey)**, paragraphs 29 to 31.

The argument of Mr. Anuj, learned counsel appearing for the review petitioner has been contested by Mr. Prasad, learned Government Pleader No.14 and Mr. Singh, learned counsel appearing for the private opposite party-writ petitioner to submit



that at no stage of the proceedings did the review petitioner ever objected to the order so passed and even before the Division Bench she preempted a dismissal by choosing to withdraw the appeal for filing the review application which by the conduct of the review petitioner is fit to be dismissed. According to the learned counsel appearing for the opposite parties, the review petitioner participated in the proceedings before the Principal Secretary, Human Resources Department without any objection and after the order has gone adverse to her interest that she has chosen to file the present review petition. In short the argument of learned counsel for the opposite parties herein that the review petitioner having taken a calculated risk before the Principal Secretary that the order has gone against her she has chosen to file the review application.

Mr. Prasad, learned Government Pleader No.14 has referred to a judgment of the Supreme Court reported in **1992 Supp. (3) SCC 106 (National High School vs. Education Tribunal)** and in reference to the opinion at paragraph 4 he submits that in a similar circumstance arising in the said case the Supreme Court has held that the party aggrieved could not raise objection on the jurisdiction of the adjudicating authority.

Learned counsel has next referred to a judgment reported in **(2003) 8 SCC 671 (State of Nagaland vs. Toulvi Kibami)** to submit that the Supreme Court taking note of a similar situation



where the order of the Court had been acted upon, held that in view of the subsequent events which has taken place in compliance of the judgment and order under review, the review was not maintainable as the judgment had been acted upon and stood exhausted.

The third judgment relied upon by Mr. Prasad is reported in **2017(3) PLJR 865 (Umesh Kumar vs. State of Bihar)** and in reference to the opinion at paragraph 5 of the judgment he submits that the Division Bench taking note of similar objection raised in a matter arising from Panchayat Teacher appointment dispute where the parties relied upon the Full Bench decision in **Kalpana Rani** (supra) has held that where the authority was acting under the orders of the Court to hold enquiry, such order could not be held lacking in jurisdiction.

I have heard learned counsel for the parties and I have perused the records.

The issue has already been delineated by me hereinabove and requires no reiteration. The issue is whether the petitioner has made out a case for review. Though the principles articulated by Mr. Anuj, learned counsel appearing for the review petitioner in support of the prayer for review made herein cannot be contested and are well settled but the issue is whether the said principles can be extended to the present case. In my opinion, even though the principle that neither a jurisdiction can be conferred by a judicial



verdict nor it can be assumed by consent are principles well settled for any discussion thereon. However in so far as the case in hand is concerned, it is not inter-party contest arising from selection process which requires an adjudication rather it was on account of a peculiar situation arising where the orders of this Court on the respective writ petitions filed by the review petitioner and the private opposite party had resulted in an order of reinstatement of both the persons and for the same post in absence of proper assistance from the State authorities. Whereas the writ petition of the review petitioner was allowed vide order dated 19.2.2008 in CWJC No.9219 of 2007, the writ petition of the writ petitioner-private opposite party herein bearing CWJC No.2040 of 2008 was also allowed on 25.3.2009 reinstating her to the post. Since the dichotomy had arisen due to non-filing of counter affidavit by the State respondents that this Court directed the Principal Secretary, Human Resources Department to make an enquiry into the contest and resolve the same. It is abundantly clear from the judgment and order under review that it is not the inter-party merits which was required to be tested rather it was the dichotomy prevailing which had to be resolved. In the situation thus noted there was no error in the order directing enquiry into the matter by the Principal Secretary.

The conduct of the review petitioner has already been



deprecatd by this Court in the earlier round of proceedings in CWJC No.23465 of 2011 and the situation has not improved any further because having participated in the proceedings before the Principal Secretary and having lost the challenge vide order bearing Memo No.1576 dated 27.10.2014 passed by the Principal Secretary, Education Department placed on record vide Annexure 'A' in the counter affidavit filed by the State she has chosen to file this review application three months thereafter on 9.1.2015 after withdrawing her Letters Patent Appeal on 15.12.2014.

Apart from the opinion expressed by me hereinabove even the judgments so relied upon by Mr. Prasad, learned Government Pleader No.14 puts a quietus to the issues raised herein.

In the case of **Toulvi Kibami** (supra) the Supreme Court taking note of the fact that the parties had acted under the judgment and order passed by the Letters Patent Bench held that the judgment stood exhausted and thus the review petition had been rendered futile, not fit to be entertained or decided on merits. The Supreme Court while expressing similar opinion in the case of **National High School** (supra) has held that the party having participated in the enquiry without raising objection on the jurisdiction was estopped from raising any objection.

The judgment of the Division Bench in the case of **Umesh Kumar** (supra) is on identical situation where under the orders of



this Court, the District Magistrate had exercised the jurisdiction and which was questioned placing reliance on the Full Bench Judgment of this Court in the case of **Kalpani Rani** (supra) as relied upon by Mr. Anuj. I am tempted to reproduce the opinion of the Division Bench present at paragraph 5 of the judgment which squarely applies to the issue in hand and reads under:

“5.We have heard learned counsel for the parties and find no merit in the present appeal. The question which is required to be examined is as to the nature of the order passed by the District Magistrate on 26th of March, 2008. It is the said order which was restored by the learned Single Bench. We find that such an order is not an order in terms of the 2006 Rules to examine the legality and validity of the appointment either as Shiksha Mitra or Panchayat Teacher. But it is an order in terms of the direction of this Court directing the District Magistrate to conduct a fact finding enquiry and in such a fact finding enquiry, the District Magistrate has found irregularities in the process of appointment of Shiksha Mitra. Since this Court has directed the District Magistrate to issue appropriate orders or directions to the concerned Gram Panchayat, therefore, the District Magistrate was acting in terms of the direction of this Court when it passed an order on 26th of March, 2008. Such order thus cannot be said to be an order without jurisdiction as such jurisdiction exercised by the District Magistrate was not under the 2006 Rules, but in terms of the directions of this Court to conduct a fact finding enquiry and to issue such orders or directions.”

(Emphasis supplied)

Just in the case of **Umesh Kumar** (supra) even in the present case it is the dichotomy prevailing where the termination orders of the parties contesting herein had been set aside by this Court while directing reinstatement in absence of proper instructions from State authorities, that to remove the dichotomy on the facts prevailing, the Principal Secretary was directed to enquire into



matter and pass appropriate orders. It is thus not appellate powers which was exercised by the Principal Secretary rather the enquiry was held to resolve the tangle and which exercise was perfectly within his jurisdiction and clearly outside the jurisdiction of the Appellate Tribunal vested under rule 18 of ‘the Rules’.

For wasting precious time of this Court, I am inclined to impose heavy cost on the review petitioner but with much disinclination I restrain myself.

The review application is lacking on merit and is dismissed accordingly.

Let the records so put up along with the present review application be returned to their respective places.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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