

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1673 of 2017

In

Civil Writ Jurisdiction Case No.17903 of 2016

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Ganga Prasad Yadav Son of Late Hari Mohan Yadav, Resident of Village-Post Office and Gram Panchayat-Jalki, Police Station and Block-Azam Nagar, District-Katihar.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
3. The Director, Directorate of Panchayati Raj Government of Bihar Patna.
4. The District Magistrate, Katihar.
5. The Deputy Development Commissioner Katihar.
6. The District Panchayat Raj Officer Katihar.
7. The Chairman/ Secretary, Bihar Staff Selection Commission, Post Office-Veterinary College, Patna.

... Respondents/ Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kumar Roy, Advocate
For the State	:	Mr. Manish Kumar, A.C. to A.A.G. 6
For the SSC	:	Mr. S.S. Sundaram, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 06-08-2018

Heard parties.

The writ petitioner - appellant has earlier moved this Court by filing C.W.J.C. No. 1087 of 2014 assailing the decision of the State Government contained in Annexure-1 therein by which he was not granted benefit of appointment on the post of Panchayat Secretary from the list of Dalpati despite his recommendation made on earlier occasion in his favour.



However, the aforesaid writ petition was disposed of vide order dated 10.03.2015 appended as Annexure-13, to the connected writ petition making following observations:-

“The Court, however, has been taken through the detailed order, passed by the Principal Secretary, Panchayati Raj, dated 21.01.2012. It will be in the interest of things that if an application is filed by the petitioner before the Principal Secretary he will also consider the claim of the petitioner in the backdrop of what has been deliberated in the impugned order, contained in Annexure-1 and his objections thereto and pass an order on his individual claim.”

It is manifest from the aforesaid that the Principal Secretary concerned was directed to take a decision within a period of three months from the date of filing of such an application. Such decision was taken and the petitioner case this time also did not find favour of the authority. Since no decision was taken by the Principal Secretary within the time granted by the Court, M.J.C. No. 1809 of 2015 came to be filed by the petitioner. During the pendency, the order impugned as contained in Annexure-1 to the connected writ petition was passed which was assailed in the connected writ petition. In the meantime, the contempt petition came to be heard and was disposed of observing that the speaking order already having been passed and that has already been put to challenge in another writ petition, the contempt proceeding cannot continue.



However, the writ petition bearing C.W. J.C. No. 17903 of 2016 has been disposed of vide impugned order dated 08.08.2017 by the learned Single Judge observing that in view of the position existing in Annexure-13, i.e. the order passed by learned Single Judge in C.W.J.C. No. 1087 of 2014, the second round of litigation cannot be allowed. If the direction has not been carried out by the authority concerned, the remedy would lie in a contempt jurisdiction and not by way of second writ petition.

In our view, since before passing of the final order dated 08.08.2017 in connected writ petition, the M.J.C. No. 1809 of 2015 was disposed of on 20.01.2017 observing that the speaking order already having been challenged in another writ application, the same would not be maintainable, now, the orders have put the petitioner-appellant in a position in which he is finding himself remediless. Since a detailed reasoned order has been passed pursuant to the direction contained in Annexure-13 rejecting the case of writ petitioner -appellant, in our considered view, the writ petition would be maintainable against the aforesaid order.

However, it is noted that a copy of the order dated 20.01.2017 passed in M.J.C. No. 1809 of 2015 has been produced at the time of hearing of this case but it could not be produced before the learned Single Judge. Let the same be kept in record.



In the aforesaid background of the matter, we are of the view that the order passed in contempt proceeding and the impugned order which has been passed in connected writ petition have put the petitioner in remediless position and thus, we have to hold that in the facts and circumstances of the case, writ petition is required to be heard and decided on its own merit.

In the result, this appeal stands allowed. The impugned order is quashed and set aside. The matter is remanded to the learned Single Judge for taking a decision on its own merit and in accordance with law.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2018
Transmission Date	NA

