

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3114 of 2017

In

Letters Patent Appeal No. 1640 of 2016

In

Civil Writ Jurisdiction Case No. 7013 of 2016

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1. Ashwani Kumar Singh, son of Late Girija Singh, R/o Mohalla – Punaichak (Hanuman Nagar), Dr. C.P. Thakur Path, P.O. and P.S. Shastri Nagar, District Patna,
 2. Jai Shankar Paswan, Son of Sri Janeshwar Paswan, R/o Village Jarmakhap, P.S. & District Aurangabad,
 3. Pramod Kumar, son of Late Dinesh Kumar Mohan, R/o Mohalla Bairagi Near Panchal Niwas, Post – Railway Station, Gaya, P.S. Delha, District Gaya,
 4. Ashok Kumar Bharti, son of Late Bharosha Singh, R/o At R.K. Nagar, Post Jaganpura, District Patna,
 5. Jay Nandan Poddar, son of Sri S.N. Poddar, R/o Maheshkhut, P.S. Maheshkhut, District Khagaria.
 6. Abhay Kumar Roy, son of Late Subelal Roy, R/o Village Sirdilpur, P.S. Patori, District Samastipur

.... Petitioners

Versus

1. The Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna through its Chairman cum Managing Director, Patna,
2. Sri Pratyay Amrit, Chairman cum Managing Director, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna,
3. Sri Rajiv Ranjan Sinha, Genera Manager (Human Resources), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna,
4. Sri Rakesh Ranjan, Officer on Special Duty (Human Resources / Administration), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna,

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. S.C. Jha, Advocate.

For the Respondent/s : Mr. Anand Kumar Ojha, Advocate.

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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: 09-07-2018

The petitioner in the present case has complained about willful and deliberate violation of the order dated 30.11.2016 passed by a co-ordinate bench of this Court in L.P.A. No. 1640 of 2016.

2. The learned counsel representing the petitioner has placed before us the order dated 30.11.2016 (Annexure-1), the operative part of the order reads as under:-

“We have heard learned counsel for the parties and find that the order of the learned Single Bench holding that the Circular no. 862 dated 7th of October, 2009 is not applicable to the Departmental Examination in question cannot be sustained. The reading of the extract from the Circular shows that it was issued not only to revise the syllabus but also the Rules and Regulations for conducting various examinations. Though initially, Departmental Examination was not part of the Circular but such examinations was included vide communication dated 4th of October, 2010. Therefore, not only syllabus of Departmental Examination stands revised but also the number of attempts stands increased to five in terms of Clause 8 of the circular dated 7th October 2009. Clause 8 of the Circular deals with “aforesaid departmental examination” that examination includes the Departmental Examination, therefore, it cannot be said that the Circular of 16th of March, 1962



will continue to be applicable for the Departmental Examination and that the Circular dated 7th of October, 2009 is not applicable as it is applicable in respect of syllabus and not in respect of examination. Consequently we find that the order passed by the learned Single Bench is not sustainable, the same is set aside.”

3. In response to the application earlier a show cause was filed on behalf of the opposite parties in which they enclosed a copy of the notice by which extension of the date of submission of application for departmental examination – 2017 was notified. The said Notice is Annexure S/4 to the Show Cause.

4. On 19.02.2018 when this matter was taken up, on going through the contents of the said Notice (Annexure S/4) particularly Clause 3 thereof, we took a prima facie view that such notice is nothing but an effort to camouflage and prevent grant of benefit of the Circular dated 07.10.2009 so far as it permits five chances to be taken up for appearing in the LPP, Part I & Part II Examination. We gave a liberty to the respondents to file their show cause failing which the matter would proceed for initiating action for contempt.

5. After the said order was passed, the opposite parties withdrew the Notice (Annexure S/4) and came with Standing Order no. 07 dated 11.01.2018 (Annexure S/10 to the Show Cause dated 28.02.2018) incorporating a fresh decision of the Board of Directors.



6. Learned counsel representing the opposite parties submits that there is no willful or deliberate attempt to disobey the order passed by the Hon'ble Division Bench in this case, rather by issuing the Standing Order no. 07 dated 11.01.2018 a comprehensive and consolidated policy on the issue of LPP Examination has been laid down and the policy decision is based on due deliberation of all issues with an intention to harmonize various interests and to create an even and levelised playing ground with equal opportunity to all to excel to the higher posts.

7. On the other hand, learned counsel representing the petitioner has vehemently argued that the new Standing Order no. 07 dated 11.01.2018 is nothing but an attempt to circumvent the order and direction of the Hon'ble Division Bench and, therefore, the opposite parties have made themselves liable for initiation of contempt proceedings against them.

8. We have heard learned counsel for the parties and perused the records.

9. It appears to us that while disposing of LPA No. 1640 of 2016 vide order dated 30.11.2016 the learned co-ordinate bench of this Court interpreted the circular and held that it was issued not only to revise the syllabus but also the rules and regulations for conducting various examinations. It was also found that though initially the



departmental examination was not part of the circular but such examination was included vide communication dated 4th October, 2010, therefore, the learned co-ordinate bench was of the view that not only the syllabus of the departmental examination stands revised but also the number of attempts stands increased to five in terms of Clause 8 of the Circular dated 07.10.2009. It was held that in view of Clause 8 of the Circular dated 07.10.2009 it cannot be said that the Circular dated 16.03.1962 will continue to be applicable for the departmental examination.

10. This Court, while setting aside the impugned judgment of the learned Writ Court, directed the respondents to take consequential steps in accordance with law.

11. Now, in the Show Cause filed on 07.03.2018 the opposite parties have come out with their policy decision. Apart from the fact they have come out with a policy decision at this stage, this Court also finds that in the Show Cause it is specifically stated that in view of the order dated 11.09.2017 passed by this Court in MJC No. 1336/2017 an affidavit has been filed. It is submitted that the result of the petitioners, namely, Rakesh Kumar, Ajoy Kumar, Ashwani Kumar Singh and Abhay Kumar Roy, who were the petitioners, had been declared with a stipulation that such declaration of the result will not be treated as a precedence.



12. As a matter of policy decision the management / power company has decided to annul all the executive instructions / circulars connected with LPP Part I & Part II Examinations. The Board of Directors in its 58th Meeting examined various aspects relating to the matter and finding that there will be multiplicity of problems with the present policy wherein two classes of persons are being created, one with large number of applicants who may get more opportunity and second those who are getting only three attempts to pass the same examination, the Board has found that several orders issued for LPP Examination have been creating confusion and, therefore, it was decided to issue a consolidated standing order by annulling all the previous orders.

13. Attention of this court has been drawn towards the Standing Order No. 07 dated 11.01.2018 by which it has been provided that for purpose of promotion on the post of Accountant and above that post a LEKHA PRAVIN PARIKSHA (LPP) will be held for the persons working on the post of Junior Accounts Clerk / Bill Clerk / Junior Accounts Assistant / Accounts Assistant and Accountant. This examination will be held in two parts, Part I and Part II, and those who are passing in Part I Examination will be eligible to participate in Part II Examination. The Standing Order also provides that for purpose of appearing in LPP Part I and Part II



Examinations maximum three chances will be provided. The syllabus for these two examinations will be as per the Standing Order No. 05 dated 25.05.2017.

14. After going through the aforesaid Standing Order no. 07 dated 11.01.2018 as contained in Annexure S/10 to the Show Cause dated 07.03.2018, we are of the view that the legality, validity and correctness of the said Standing Order cannot be looked into in this contempt application. The scope and ambit of the contempt jurisdiction clearly provides that the Court while considering the contempt application would not go behind the basic order. It is a matter of policy decision which has now been enforced by the Standing Order no. 07 dated 11.01.2018. Whether such a policy decision is wrong or right or the same would not be applicable in respect of the present petitioners may only be considered in an appropriate jurisdiction by a competent court. This Court sitting in its contempt jurisdiction does not find any reason to initiate a proceeding for contempt of court against the opposite parties. It is well said that contempt is a matter between the court and the contemnor and in the given circumstances this Court is not willing to initiate a contempt proceeding as there is no material to show that there is any deliberate and willful disobedience of the order passed by the Court. The contempt application is, therefore, dismissed.



15. It goes without saying that the petitioners, if so advised, will have liberty to challenge the Standing Order and such other orders as they may think just and proper for purpose of appropriate relief.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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