

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.505 of 2018

In
Letters Patent Appeal No.1155 of 2017

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Renu Sinha W/o Late Bijoy Kumar Lal Resident of Village and P.O.
Nagri,P.S. Charpokhari,Dist.-Bhojpur

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary,General Administration Department,Govt. of Bihar,Patna
2. Mr. Amir Subhani, Principal Secretary,General Administrative Department,Govt. of Bihar,Patna
3. Mr. And Kishore I.A.S., the then Commissioner,Patna Division,Patna
4. Dr. Birendra Prasad Yadav, the then Collector-cum-District Officer,Bhojpur at Ara
5. Sri Surendra Prasad, the Additional Collector,Superior incharge of Establishment,Bhojpur at Ara
6. Mr. Naiem Edbal, Dy. Collector(Establishment),Bhojpur at Ara
7. Mr. Praveen Kumar, Secretary to the Commissioner,Patna Division,Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ram Krishna Singh, Advocate
For the Opposite Party/s : Mr.P. K. Verma Aag 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 31-07-2019

I. A. No. 8471 of 2018

For the reason stated in the interlocutory application,
the delay of 74 days in preferring this review application is
hereby condoned.

I. A. No. 8471 of 2018 stands allowed.

Heard the parties on merit.

Heard Shri Ram Krishna Singh, learned counsel for



the petitioner at length on this application for review which has been preferred to recall the judgment dated 17th July, 2018 on the ground that there is an error apparent on the face of the record to the extent that the Bench which proceeded to decide the matter, had incorrectly applied the law in the case of **Midnapore Peoples' Cooperative Bank Ltd. & Ors. Vs. Chunilal nanda and Ors.** reported in (2006) 5 SCC 399.

It is therefore, submitted that there being an error apparent on the face of the record, the judgment deserves to be reviewed as a wrong application of law has manifested injustice.

In order to substantiate the submissions learned counsel for the petitioner has invited the attention of this Court to the order passed by the learned Single Judge in the contempt jurisdiction contending that the direction given on 17.08.2016 was only in order to aid the directions issued earlier, and was not an exercise of jurisdiction under Article 226 of the Constitution of India. It is submitted that the contempt discretion was exercised for the purpose of implementation of the intention of this Court with regard to claim of the applicant for compassionate appointment. This therefore, was not amenable to an intra court appeal inasmuch as the contempt application had been disposed of with a direction that could not



be appealed against in terms of Contempt of Courts Act, 1971 or otherwise.

It is further submitted that the L. P. A otherwise would not be maintainable keeping in view the provisions of Clause 10 of the Letters Patent Appeal as contained in the Patna High Court Rules.

Having considered the submissions at length, it would be apt to trace the history of the entire litigation in brief inasmuch as, the review has been preferred virtually raising all the issues on merits, which the learned counsel submits goes in aid of the applicant.

In this regard it appears that one Shushila Devi had filed C.W.J.C. No. 5975 of 1990 that was disposed of on 27.09.1993 with a direction that her case may be considered sympathetically.

The applicant-appellant Renu Sinha claiming a similar benefit filed C.W.J.C. No. 5379 of 2015. The contention was that the husband of the petitioner had passed away way back in the year 2009 because of non-decision on the part of the respondents as a result whereof the appellant was compelled to approach the High Court under Article 226 of the Constitution of India.



The said writ petition was disposed of on 24th August, 2015 by the following order:

“Instead of delaying the matter any further by waiting for a counter affidavit of the State, which has not been filed since April, the Court directs the Chairman-cum-District Magistrate of Bhojpur of the District Compassionate Appointment Committee to consider the claim of the petitioner for compassionate appointment within a period of three months from the date of production of a copy of this order. Decision must be taken in view of the fact that the husband of the petitioner passed away way back in the year 2009 itself and because of non-decision, the poor petitioner has been compelled to approach the High Court after patiently waiting for six years.

The time frame indicated above must be adhered to. Writ is disposed of with the above direction.”

A perusal of the said direction would indicate that the District Compassionate Appointment Committee was commanded to consider the claim of the appellant for compassionate appointment within a period of three months.

It is obvious that there was no direction to appoint the appellant but consider her claim in accordance with law.

It appears that the said direction was not being complied with timely as a result whereof the contempt application being M.J.C. No. 1099 of 2016 was instituted in which the following order was passed on 17th August, 2016:

“Contempt application stands disposed of now with a direction upon the District Magistrate, Bhojpur at Arra that the claim of the petitioner for compassionate appointment, keeping in mind her position in the panel list prepared, will be expedited



since they have accepted the position of the petitioner as an exceptional case which is going to be considered for compassionate appointment even though her husband was umidwar peon.”

A perusal of the said order indicates that there is no finding recorded as to any wilful or deliberate disobedience which is a *sine qua non* for proceeding in the contempt jurisdiction. In the absence of any disobedience having been reflected what we find is that the learned Single Judge proceeded to issue a direction to accept the claim of the petitioner by considering her status as such even though her husband was a ‘umidwar peon’.

From the facts on record, we find that the late husband of the appellant was not a regular appointee and was on daily wages, even though his services did continue for a very longer time. The husband therefore, was not in the regular establishment and consequently it appears that the District Compassionate Appointment Committee in its meeting held on 13.06.2016 came to the conclusion that in the light of the guidelines issued by the General Administration Department the husband of the petitioner was not a Government Servant, as such his widow was not entitled for appointment on compassionate ground.

This order which had been filed along with the



supplementary show cause before the learned Single Judge who was hearing the contempt matter does not even find a reference in the order dated 17.08.2016. The direction, therefore, issued by the learned Single Judge while exercising contempt jurisdiction, was bereft of relevant considerations and consequently for the said reason a Letters Patent Appeal was preferred by the State of Bihar questioning the exercise of jurisdiction by the learned Single Judge in the matter.

Learned counsel contends that the L. P.A. would not be maintainable even if such a jurisdiction has been exercised.

We are unable to agree inasmuch as, once the direction issued by the learned Single Judge on 24.08.2015 had been complied with by a positive decision having been taken by the District Compassionate Appointment Committee on 13.06.2016, then there was no wilful or deliberate disobedience and, therefore, the contempt application ought to have been consigned. Instead the learned Single Judge went on to issue a direction which amounts to a Mandamus issuing a direction contrary to the decision of the District Compassionate Appointment Committee which has neither been challenged nor was set aside nor had been commented upon by the learned Single Judge.



In this background we find that the direction so issued in the contempt jurisdiction was totally beyond the scope of the contempt matter and consequently the Letters Patent Appeal was maintainable viz against an order which amounts to a judgment on an issue which was not subject matter of the contempt jurisdiction. Consequently the appeal had been rightly entertained and we find from the record that after entertaining the appeal a Division Bench on 22nd August, 2017 had passed the following order:

“Issue notice to the respondent both on the memo of appeal, I.A. No. 6079 of 2017 and I.A. No. 6080 of 2017 application for condonation of delay and stay, on requisites within one week by ordinary process as well as registered cover with A.D., returnable in four weeks. Having heard learned counsel for the appellants and on going through the original order passed in C.W.J.C. No. 5379 of 2015 on 24.08.2015, we find that the writ petition was disposed of directing the appropriate Committee to consider the case of the respondent for compassionate appointment.

The show-cause filed by the respondents in the contempt proceedings i.e. M.J.C. No. 1099 of 2016 indicates that the Committee after considering the matter in its meeting held on 13.03.2016 has rejected the claim for compassionate appointment on various reasons as are indicated therein.

Once the claim was rejected, any further direction issued in the contempt proceedings for grant of compassionate appointment or even for consideration would be an order passed exercising its jurisdiction under Article 226 of the Constitution and, therefore, amount to passing a fresh order in the nature of a writ and, therefore, an L.P.A. would be maintainable, as laid down by the Supreme Court in the case of **Midnapore Peoples’ Coop. Bank Ltd. and others vs. Chunilal nanda and others -(2006) 5 SCC 399.**

Keeping in view the aforesaid, we direct for issuance of notice to the respondent and stay the further proceedings in M.J.C. No. 1535 of 2017.”



It is after a full scale hearing that the Letters Patent Appeal was allowed and the impugned order of the learned Single Judge was set aside.

This review application has therefore, been filed attempting to re-argue the entire matter on merits but keeping in view the fact that the appellant deserves a satisfaction in law, we did not strictly deal this matter to be a matter arising out of error apparent on the face of the record. We have examined the entire submissions and we find that there is no scope for review at all either on facts or on law.

The review application is accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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