

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.68 of 2019

In
Miscellaneous Jurisdiction Case No.809 of 2012

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1. The State of Bihar through the Commissioner-cum-Secretary, Human Resources Development Department, Govt. of Bihar, Patna namely Sri Anjani Kumar Singh
 2. The Commissioner-cum-Secretary Human Resources Development Department, Govt. of Bihar, Patna namely Sri Anjani Kumar Singh
 3. The Director Mass Education, Govt. of Bihar, Patna namely Sri Vinod Kumar

... .. Petitioners

Versus

1. Bihar State non formal cum special education Instructor Union through its Member-cum-Media In-charge, namely Ashok Kumar Das S/o Sri Makundi Das, State Media Prabhari, Bihar R/o Nayachak, P.o.- Goura Chouki, P.s.- Kajraili, Distt.- Bhagalpur
2. Ram Naresh Chaudhary S/o Late Deni Choudhary Vill. and P.o.- Shahdullapur, P.s.- Ganga Bridge, Distt.- Vaishali
3. Shubh Narayn Upadhayay S/o Late Ganesh Upadhayay Vill.- Mesudha, P.o.- Piprahi, Distt.- Sheohar
4. Rajendra Ram S/o Late Jawahar Ram R/o At and P.o.- Done Motipura, P.s.- Darouli, Distt.- Siwan
5. Kaushal Kumar Singh S/o Late Dukha Prasad Singh R/o At and P.o. and P.s.- Nauhatta, Distt.- Saharsa
6. Nityanand Singh S/o Late Bhudeo Narayan Singh R/o At and P.o.- Kakwara, P.s.- Banka, Distt.- Banka
7. Deopujan Prasad S/o Sri Moter Sah R/o At. and P.o.- Jhakhara, P.s.- Jagdishpur, Distt.- West Champaran
8. Lakhindra Prasad Yadav S/o Sri Sita Ram Ray R/o At- Sabli, P.o.- Barachakia, P.s.- Madhuvan, Distt.- East Champaran
9. Binod Kumar Singh S/o Sri Suraj Narayan Singh R/o At and P.o.- Braipatti, P.s.- Yadavpur, Distt.- Gopalganj
10. Rajendra Prasad Singh S/o Late Ramdutt Singh R/o At and P.o.- Ramgar, P.s.- Awtarnagar, Distt.- Saran
11. Surendra Mishra S/o Late Mahadeo Mishra R/o At- Kusi, P.o.- Karma Bhagwan, P.s.- Aurangabad, Distt.- Aurangabad
12. Kaushal Kishore Roy S/o Late Shivharan Roy R/o At- Chingitakia, P.o.- Bajpatti, Distt.- Sitamarhi
13. Pankaj Kumar Singh S/o Sri Bal Ram Singh R/o At- Naya Tola Fulwari Ward No. 36, P.s. and Distt.- Katihar, Presently Secretary, Bihar State Non-Formal-cum-Special Education Instructor Union
14. Ranjit Singh S/o Late Ram Pati Singh R/o Vill.- Gajadhar Ganj, P.o.-



Gajadhar Ganj, P.s.- Buxar, Distt.- Buxar

15. Veena Verma W/o Sri Arun Kumar Sinha R/o Vill.- Janki School Bari Badalpura, P.O. and P.s.- Khagaul, Block- Danapur, Distt.- Patna
16. Gopal Rai S/o Shri Parmatma Rai R/o Vill. and P.O.- Rajaure, Ps.- Begusarai (Mufassil), Distt.- Begusarai

... .. Opposite Parties

with
Letters Patent Appeal No. 319 of 2019
In
Miscellaneous Jurisdiction Case No.4208 of 2016

1. The State of Bihar through the Chief Secretary, Old Secretariat, Government of Bihar, Patna, namely Sri Anjani Kumar Singh
2. The Principal Secretary, Department of Mass Education, Government of Bihar, Patna, namely Sri R.K. Mahajan
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna, namely Sri D.S. Gangwar
4. The Director, Primary Education, Department of Human Resources Development, Government of Bihar, Patna namely Sri M. Ramachandrudu
5. The Director, Mass Education, Department of Education, Government of Bihar, Patna, namely Sri Binodanand Jha

... .. Appellants

Versus

1. Anupcharik Shiksha Anudeshak Seva Sangathan through State General Secretary, Md. Jamaluddin Ansari, in the Post of General Secretary, Son of Md. Rahmat Ali Resident of Village-Nisarpura, Police Station- Rampur Chiram, District-Arwal
2. Sri Manohar Singh Son of Sri Bhola Singh Resident of Village-Mudhi, Police Station-Chainpur, District-Kaimur at Bhabua in the Post of State President
3. Basgeet Ram Son of Late Lakhi Ram Resident of Village- Sukhdevan Bigha, Police Station-Daudnagr, District-Aurangabad in the Post of State Secretary

... .. Respondent/s

Appearance :

(In CIVIL REVIEW No. 68 of 2019)

For the Petitioner/s : Mr. Lalit Kishore, A.G.
Mr. Bishwa Bibhuti Kumar Singh, AC to AG
For the Opposite Party/s : Mr. Binod Kanth, Sr. Adv.
Mr. Sunil Kumar Singh, Adv.

(In Letters Patent Appeal No. 319 of 2019)

For the Appellant/s : Mr. Lalit Kishore, A.G.
Mr. Bishwa Bibhuti Kumar Singh, AC to AG
For the Respondent/s : Mr. Binod Kanth, Sr. Adv.
Mr. Sunil Kumar Singh, Adv.



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date:- 07-08-2019

The State of Bihar and its authorities have moved this Court seeking a review of the order dated 23.07.2018 passed by this Court in MJC No.809 of 2012 (Bihar State Non Formal cum Special Education Instructor Union & Ors. Vs. The State of Bihar & others) to a limited extent.

The basic contention of learned Advocate General representing the petitioners is that MJC No.809 of 2012 was heard along with several other writs and contempt applications because at the relevant time in view of the judgment of the Hon'ble Supreme Court in Special Leave to Appeal (c) No.21961 of 2017 (State of Bihar & Ors. Vs. Bihar State Non Formal Cum Special Education Instructors Union & Ors.), the Hon'ble Division Bench thought it just and proper to get all the writs and contempt applications raising similar issues listed along with MJC No.809 of 2012, but when the judgment dated 23.07.2018 came to be pronounced, this Court disposed off M.J.C. No. 809 of 2012 alone and decided to send back all the individual writ applications to the learned writ Court for a decision on the basis of the pleadings and submissions in



accordance with law.

It is submitted that while doing so, the Hon'ble Division Bench dealt with the various categories of cases both writ petitions as well as contempt petitions including batch of cases which were before the Hon'ble Division Bench and took note of the facts brought on record by way of a supplementary show cause.

Our attention has been drawn towards the category of cases examined by the respondents which are recorded in paragraph 17 to 23 of our judgment dated 23.07.2018 which are recorded hereunder for a ready reference:-

“17. In course of hearing of the present application, our attention has been drawn towards the supplementary show cause filed on behalf the Opposite Party No. 3 on 20th July, 2018 (sworn on 18.04.2018). It is stated in the supplementary show cause that the claims of absorption has been made by two sets of petitioners. So far as the individual petitioners are concerned, the claims of those who have filed individual writ petitions in their personal names, have been examined individually. A list containing details of the claims of the individual petitioners, consideration thereof and, the status of their claims have been shown in the said list which has



been marked as **Annexure-A** to the supplementary show cause. The stand of respondent no. 3 is that in case of individual petitioners only the claim of the petitioners of MJC No. 54 of 2013 (Shiv Pujan Sahay & Ors. V. State of Bihar & Ors.) is fit to be considered. According to them, there are three petitioners in this case out of which one has already been adjusted and rest are in the waiting list who will be adjusted against the available vacancies.

18. It is further stated that about 293 individual petitioners of the different contempt petitions i.e. MJC No. 143 of 2018, MJC No. 404 of 2018, MJC No. 1749 of 2017 and MJC No. 3303 of 2017 respectively of the present batch of cases were not a party to the writ petitions for whose compliance the contempt petitions have been filed. A list containing names of such petitioners saying that the claims of these petitioners cannot be examined in view of the order passed by the Hon'ble Supreme Court on 26.02.2016 in SLP (Civil) 32079 of 2015 has been enclosed as **Annexure-B** to the supplementary show cause.

19. As regards, the petitioners of MJC No. 6259 of 2013 and MJC No. 2028 of 2016 arising out of C.W.J.C. No. 97 of 2013, it is stated that these petitioners belong to NGO and their names have not been recommended by the District Level Committee. These NGOs, it is stated, were directly funded by the Central Government



and these petitioners never worked for Government of Bihar. It is further stand of respondent no. 3 that as per order of the Hon'ble Supreme Court, adjustment of Instructors are to be done like that of Supervisors and in case of Supervisors no member of NGO was adjusted as Supervisors, so these petitioners are not fit for adjustment.

20. *An issue has been raised with reference to the claims being filed by the Association and the Employees Union. It is stated that as per the direction of this Court, the names of those members of the Association whose names were indicated to the Writ Court when the writ petition was pending and whose names were available on record before the date of disposal of writ petition, were examined. The three contempt petitions filed by the Associations are MJC No. 809 of 2012 (the present one), MJC No. 3604 of 2012 and MJC No. 4208 of 2016 and the number of petitioners in the writ cases were 18, 1 and 3 respectively. A list containing details of the claims of the members of Association is annexed as **Annexure-C** to the supplementary show cause.*

21. *It has been brought to our notice in the supplementary show cause that the list of members which was submitted by the order of this Hon'ble Court, the Bihar State Non-Formal-cum-Special Education Instructor Union (MJC No. 809 of 2012) has submitted a list of 6413 member Instructors and and the Chapra District Non-Formal Education Instructor and Special Education Instructor Sangh (MJC No. 3604 of 2012) has submitted a list of 1639 members. In the case of MJC No. 4208 of*



2016, the Anaupcharik Shiksha Anudeshak Seva Sangathan has submitted a list of total 5156 members. It has also tried to get these members included as petitioners in C.W.J.C. No. 3460 of 2016 through supplementary affidavits and Interlocutory Application filed after the cut off date i.e. 26.02.2016, however, their claim was rejected by the Hon'ble court and they were not allowed to intervene as petitioners vide order dated 11.08.2016. With respect to these members who are now claiming their absorption, it is the stand of the respondent no. 3 that because of these lists of members Instructors submitted by the Associations were given after the cut off date i.e. 26.02.2016, therefore, their claims cannot be examined in the light of the order of the Hon'ble Supreme Court.

22. The respondent no. 3 has further informed us that some of the Instructors filed a writ petition through a registered 'Sangh' namely, Aupcharik Shiksha Anudeshak cum Special Education Sewi Sangh (registered) and others (C.W.J.C. No. 14302 of 2014) which was disposed of by this Court vide order dated 26.10.2016 with a direction that the matter will be covered by the decision of the Hon'ble Apex Court in S.L.P. No. 32079 of 2015. In these writ application there were only 2 individual petitioners. The 'Sangh' in MJC No. 564 of 2017 when filed a modification application to include more persons as petitioners for claiming the relief who were the so called members of the said registered 'Sangh', the same was dismissed by this Court vide order dated 19.04.2017 stating that no clarification/modification was required over and above the direction issued in the writ application. The 'Sangh' then went in Special Leave Petition filed before the Hon'ble Supreme Court in which again vide



order dated 19.11.2017 the Hon'ble Supreme Court clarified that the relief granted shall be restricted to only those who approach the Hon'ble High Court or Hon'ble Supreme Court as on or before 26.02.2016 and shall not apply to any fresh list. A copy of the order passed by the Hon'ble Apex Court has been brought on record. The order passed by the Hon'ble Apex Court on 26.02.2016 reads as under:-

“We find no infirmity in the order impugned herein. The Special Leave Petitions are dismissed.

The relief granted by the High Court shall be restricted to those who approached the High Court who were heard as well as who wanted to get themselves impleaded and those who have filed applications here at par with those former as well as all those petitioner instructors which are pending as on date before the High Court but shall not apply to any fresh case either here or before the High Court.....”

23. In the supplementary show cause it is further stated that there are about 263 writ petitions and 72 contempt petitions including the present batch of cases which are identical in nature and amongst which some of them were filed after the cut off date. 13 contempt petitions out of 72, it is stated, have been filed by those who were not party to the writ petitions. The list of those cases have been enclosed as Annexure-F in the supplementary show cause. Finally, it is the stand of respondent no. 3 that the Department has examined the claims of those petitioners who fulfill the conditions as per the direction of this Court and the Hon'ble Supreme Court. The claim of any petitioner who was not a party to the writ petition and filed a petition or application after the cut off date, have not been considered. The respondent no. 3 has brought on record an action taken report in



the present case.”

It is submitted that after noticing the aforesaid facts, this Court considered the action taken report submitted by the respondents and found that the various Union/Association have now come forward with a large number of names of Instructors for purpose of consideration of their cases for absorption. This Court found that admittedly when the writ application was preferred by the Unions and Associations, they had not enclosed the list of members and no court fee was paid. Thereafter considering the various judgments of this Court as well as that of the Hon'ble Kerala High Court it was held in the facts of MJC No.809 of 2012 that various Unions/Associations did not disclose the name of their members at the writ stage or even before the Hon'ble Supreme Court when the order dated 26.02.2016 was being passed.

Having said so, the Hon'ble Division Bench agreed with the stand taken on behalf of the respondent no.3 that all such members whose name was not disclosed either before this Court or before the Hon'ble Supreme Court and who had not moved this Court on or before 26.02.2016, they cannot maintain a contempt application before this Court alleging willful disobedience or disregard to the order passed by the Writ Court



as respect them. Paragraph 26 of the judgment dated 23.07.2018 specifically states that the contempt application at their instance cannot proceed.

Learned Advocate General submits that having taken a view on the issues raised in the said contempt application and other category of cases, this Court held that those will act as a guiding factor for consideration of the individual claim of the petitioners and the contempt application. Those cases were sent back and that has resulted in a situation where the petitioners are constrained to move this Court seeking a review of that part of the order by which all the remaining contempt applications which were tagged with MJC No.809 of 2012 were sent back to the respective Bench of learned Single Judge for consideration. Attention of this Court has been drawn towards paragraph 29 of the judgment dated 23.07.2018 which reads as under:-

“29. In result, the present contempt application and the intervention application are disposed of giving liberty to the individual petitioner, in the aforementioned terms. All the remaining contempt application and the writ applications which were earlier tagged with this case shall go back to the respective Bench of the learned Single Judge for consideration.”

In the review application, it is submitted that the Hon'ble Division Bench having tagged the matters for



consideration along with MJC No.809 of 2012 was required to consider all other contempt applications because that would have been in the interest of justice as one view could have been taken with consistent approach in all the cases.

It is submitted that the result of sending back all the contempt applications to the respective Bench has given rise to a difficult situation inasmuch as the State of Bihar is now facing different views and it is resulting in multiplicity of litigations. It is submitted that in one of the contempt applications being M.J.C. No. 4208 of 2016 vide order dated 09.01.2019 a learned Single Judge of this Court has taken a view that if the Association was petitioner no.1 in the writ application and the said writ petition was allowed, the members of Association will be deemed to be beneficiary of the order allowing the writ application. In the order dated 23.07.2018, review of which is being sought, this Court has taken note of the M.J.C. No. 4208 of 2016 and then found that after filing of the writ application being C.W.J.C. No. 3460 of 2016 attempt was made to get impleaded a large number of members after 26.02.2016 but the Court did not permit the same. The Court was informed that the claims of those persons who were not parties to the writ petition cannot be examined. Still the learned Single Judge while



hearing M.J.C. No. 4208 of 2016 has passed the order dated 09.01.2019. It is submitted that the order being completely in teeth of the judgment of this Court dated 23.07.2018 in MJC No.809 of 2012, the State of Bihar has moved in Letters Patent Appeal bearing LPA No.319 of 2019 which has now been tagged with the present case and is under consideration.

It is submitted by learned Advocate General that paragraph 29 of the judgment dated 23.07.2018 be reviewed in the interest of justice and all the remaining contempt applications and the writ applications which were earlier tagged with this case be considered by this Court.

Mr. Binod Kanth, learned senior counsel representing the petitioners in MJC No.4208 of 2016 in which the order dated 09.01.2019 has been passed by the learned Single Judge and which is under appeal in LPA No.319 of 2019 has submitted before this Court that the respondent no.1 Association was registered in the year 2014 under the Societies Registration Act. The Association was joined by thousand of members in the year 2010 itself when the Association was formed in the name of Anaupcharik Shiksha Anudeshak Seva Sanghathan. The said Bihar Raj Anaupcharik Shiksha Anudeshak Sangh have got 3315 Instructors as member and subsequently after registration



various other members were enrolled raising the total number of members 5156.

It is his case that all 5156 were enrolled before filing of the Writ application bearing CWJC No.3460 of 2016 filed on 15.12.2015. It is submitted that in the meeting dated 13.04.2015 and 22.09.2015 decision was taken to collect money from the members to file a Letters Patent Appeal against the order dated 21.04.2011 passed in LPA No.8481 of 2010, the said LPA was preferred by the State Government and was pending consideration. It is submitted that prior to October, 2014 the society was not registered as such the membership fee was collected and spent upon litigation cost. On 21.11.2015 a decision was taken to file separate writ petition on behalf of the Association through its office bearers and accordingly the writ petition was filed before this Court on behalf of the respondent no.1 in the name of office bearers on 15.12.2015. Later on the bank account was opened in terms of the resolution taken in the meeting dated 03.03.2016. It is therefore submitted that the learned Single Judge has rightly passed the impugned order dated 09.01.2019 in the contempt application filed by the Association.

Mr. Sushil Kumar Singh, learned counsel has also



appeared on behalf of the respondents in the contempt application and has assisted Mr. Kanth, learned senior counsel.

Having heard learned Advocate General for the State of Bihar and Mr. Binod Kanth, learned senior counsel assisted by Mr. Sushil Kumar Singh for the respondents in both the matters, this Court finds that the contention of learned Advocate General to review that part in paragraph 29 of the judgment dated 23.07.2018 passed in MJC No.809 of 2012 by which all the writ applications and contempt applications were sent back to the learned Single Judge is required to be recalled in the interest of justice. We find from the records placed before us that the bone of contention in MJC No.4208 of 2016 remains the same which were the subject matter of consideration before this Division Bench while hearing MJC No.809 of 2012. Even though the Court has dealt with the aspect of entertaining contempt at the instance of a person who was not a party to the writ, it appears that learned Single Judge has proceeded to pass order dated 09.01.2019 by taking a view that all the members of the petitioner union /sangh in M.J.C. No. 4208 of 2016 need be considered.

We have been informed that in some other contempt applications also identical issues which were subject matter of



consideration before this Court are being raised and if those are allowed to be considered again by different Benches of this Court sitting singly, it would not only result in hardship to the parties, even the State government will find it difficult to take a view as to which order of the Court should be taken in consonance with the judgment of the Hon'ble Division Bench and which should be taken against the judgment of the Division Bench which may require taking up the matters in appeal once again. This in our opinion would require us to take a view in the interest of justice if our order sending back the cases to respective Benches is creating an anomalous situation.

We are of the considered opinion that our direction to send back all those writ applications and contempt applications which were tagged with MJC No.809 of 2012 is required to be recalled/reviewed and we do so accordingly. Paragraph 29 of our judgment dated 23.07.2018 is modified to the effect that the contempt application being MJC No.809 of 2012 has been disposed off but all the remaining contempt applications and the writ applications which were earlier tagged with the said MJC No.809 of 2012 shall not go back to the respective Bench of the learned Single Judge for consideration and those will be listed before this Bench to enable the matters to be resolved by fixing



the priorities and the modes of execution of appointments.

The impugned order dated 09.01.2019 passed in MJC No.4208 of 2016 in so far as it states that because the writ petition preferred by the Association (respondent no.1) was allowed all such members of the Association are deemed to be beneficiary of the order allowing the writ application is not in terms of the guidelines set out by the Hon'ble Division Bench in its judgment dated 23.07.2018 passed in MJC No.809 of 2012 inasmuch as the Hon'ble Division Bench has after looking into the various judgments of the Hon'ble Supreme Court in these matters held in paragraph 26 of the judgment as under:-

“26. What we find from the facts of the present contempt application that the various Unions/Associations did not disclose the name of their members at the writ stage or even before the Hon'ble Supreme Court when the order dated 26.02.2016 was being passed. We are inclined to agree with the stand taken on behalf of the respondent no. 3 that all such members whose name was not disclosed either before this Court or before the Hon'ble Supreme Court and who had not moved this Court on or before 26.02.2016 (hereinafter referred to as the cut off date), they cannot maintain a contempt application before this Court alleging willful disobedience or disregard to the order passed by the Writ Court as respect them. Thus, the contempt application at their instance cannot proceed.”

The aforesaid view of Hon'ble Division Bench



judgment dated 23.07.2018 is applicable in respect of M.J.C. No. 4208 of 2016. The supplementary show cause of the State and stand of the State in respect of those persons whose names were not disclosed in writ before 26.02.2016 have been taken note of and approved.

We are of the view that the impugned order dated 09.01.2019 is not in consonance with paragraph 26 of the judgment of the Hon'ble Division Bench of this Court as the case of the Association in MJC No.4208 of 2016 is required to be considered keeping in mind the cut-off date (26.02.2016) fixed by the Hon'ble Supreme Court and which have been taken note of in paragraph 26 of the judgment dated 23.07.2018.

The Review Application as well as the Letters Patent Appeal are thus allowed to the extent indicated hereinabove. List all those matters on 14.08.2019.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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