

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.394 of 2018

In
Civil Writ Jurisdiction Case No.16684 of 2010

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Saroj Kumari D/o Ram Briksha Prasad Nirala and Wife of Krishna Prasad,
Resident of Village- Salaiya Khurd, P.S. Fathehpur, Distt.- Gaya at Present
Working as Secretary, Gram Kachahari Salaiya Kala, Block- Fatehpur,
District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary-Cum- Commissioner, Panchayat Raj Department,
Government of Bihar, Patna.
3. The Principal Secretary Cum Commissioner Department of Rural
Development Government of Bihar, Patna.
4. The Director of Panchayat Raj Department, Government of Bihar, Patna.
5. The District Magistrate, Gaya.
6. The District Panchayati Raj Officer, Gaya.
7. The Block Development Officer, Fatehpur Block, District- Gaya.
8. The Sarpanch, Panchayat Salaiyakal, Block- Fatehpur, District- Gaya.
9. Sarita Devi@ Sarita Kumari W/o Raj Kishore Bharti Resident of Village-
Barua, P.O. Fatehpur, P.S. Fatehpur, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Jha, Adv. Mr. Sudhir Kumar Mishra, Adv.
For the State	:	Mr. Dharendra Kumar, AC to AAG-6
For the Respondent No.9:		Mr. Deep Anshuman, Adv. Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 04-04-2019

The present petition has been filed for review of the
order dated 19.06.2018 passed in CWJC No. 16684 of 2010,
relevant portion whereof is reproduced herein below:-

“The respondents have not filed any counter
affidavit, hence this Court, after a lapse of eight
years of filing of the present writ petition cannot
be detained from passing orders in the present
case.



Having regard to the facts and circumstances of the case, the District Magistrate, Gaya is directed to implement the directions contained in letter dated 17.11.2009, issued by the District Panchayati Raj Officer, Gaya, if such directions have either not already been carried out or in case, the said order passed by the District Panchayat Raj Officer, Gaya has not been annulled in appeal or set-aside by a competent court of law.”

2. The learned counsel for the review petitioner, namely, Saroj Kumari, submits that though she has been arrayed as respondent no.9 in the aforesaid writ petition bearing CWJC No. 16684 of 2010, but no notice was issued by this Court, hence, she could not appear before this Court and contest the said case.

3. This Court has perused the order sheet of the aforesaid writ petition bearing CWJC No. 16684 of 2010 and finds that admittedly no notice was issued to the respondent no.9, hence she had, therefore, not appeared in the said writ petition.

4. Coming to the merits of this case, the learned counsel for the review petitioner has referred to the order dated 26.3.2010 passed by a co-ordinate Bench of this Court in a writ petition preferred by the review petitioner bearing CWJC No. 16641 of 2009, relevant paragraphs whereof are reproduced herein below:-

“ Counsel for the petitioner has drawn my attention towards an order passed by the High Court in similar matter, in the case of Sanjay Das



vs. State of Bihar (2009(4) PLJR 1034), similar issue was under consideration, in this case and in para 13 of the order, a finding has been recorded that the issue decided in CWJC No. 23905 of 2007 do not concern appointments already made. It means that persons, already appointed under the provisions of 2007 Rules, shall not be affected on account of amendment brought in the rules with retrospective effect, such appointments cannot be terminated, despite the fact that amendment has been brought with retrospective effect. Application of amendment will be prospective, so far appointments already made are concerned.

Petitioner's case is fully covered with the findings recorded in the reported decision 2009(4) PLJR 1034 (Sanjay Das Vs. State of Bihar). A direction is being issued to the Block Development Officer, Fatehpur, Gaya and other respondents not to consider the direction contained in letter No. 714 dated 31.8.2009. Persons like petitioner and others, who have already appointment, cannot be terminated from their posts in the light of the amendment Rule 5(ka) (ii) of 2007 Rules."

5. It is thus the case of the review petitioner that this Court, in the writ petition filed by the review petitioner, has already held the appointment of the petitioner to be valid and had also directed the Block Development Officer, Fatehpur, Gaya and other respondents not to consider the direction contained in letter no. 714 dated 31.08.2009 issued by the Block Development Officer, Fatehpur, Gaya, whereby all Sarpanches of the concerned Block had been directed to cancel the appointments made, prior to 31.1.2008, of those appointees whose qualification of Madhyama



has been treated to be equivalent to matric. In the said letter, it has been further stipulated that in case appointment of matric pass candidates has been made and there are candidates who possess Madhyama passed certificate and have more percentage of marks than the matric passed candidates, then such candidates are to be given priority in the matter of appointment and accordingly, the merit list is required to be modified.

6. In nutshell, the case of the review petitioner is that since in the earlier round of litigation, this Court has held the appointment of the petitioner to be valid and directed that her appointment cannot be terminated, no interference is warranted at any level as far as the services of the review petitioner is concerned.

7. The respondents do not dispute the position as is existing on facts and in law.

8. Having regard to the facts and circumstances of the case, this Court finds that since the order under review dated 19.6.2018 passed in CWJC No. 16684 of 2010 was conditional i.e. subject to the order dated 17.11.2009, passed by the District Panchayati Raj Officer, Gaya, having not been annulled in appeal or set-aside by a competent court of law, and the review petitioner having now produced an order passed by a competent court of law



i.e. the order passed in CWJC No. 16641 of 2009 dated 26.3.2010, whereby and whereunder this Court has put a seal of approval with regard to the appointment of the review petitioner, the directions contained in letter dated 17.11.2009 issued by the District Panchayat Raj Officer, Gaya are perverse and contrary to the directions of this Court passed earlier vide order dated 26.3.2010.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present review petition is allowed, the letter dated 17.11.2009 issued by the District Panchayat Raj Officer, is quashed and consequently, the writ petition bearing CWJC No. 16684 of 2010 stands dismissed.

10. At this juncture, the learned counsel for the respondent no.9 submits that she be granted liberty to take recourse to such remedies as are available under the law. It is needless to state that the respondent no.9 is free to take recourse to such remedies, as are available under the law.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

