

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.728 of 2019

In

CIVIL REVIEW No.394 of 2018

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Sarita Devi @ Sarita Kumari aged about 31 years, (F). W/o Raj Kishore Bharti Resident of Village- Barua, P.O. Fatehpur, P.S. Fatehpur, District-Gaya.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. The Principal Secretary -cum-Commissioner Panchayat Raj Department, Govt. of Bihar, Patna
3. The Principal Secretary-cum-Commissioner Department of Rural Development, Govt. of Bihar, Patna
4. The Director of Panchayat Raj Department Govt. of Bihar, Patna
5. The District Magistrate Gaya
6. The District Panchayat Raj Officer, Gaya
7. The Block Development Officer Fatehpur Block, Distt.- Gaya
8. The Sarpanch Panchayat Salaiyakal, Block- Fatehpur, Distt.- Gaya
9. Saroj Kumari D/o Ram Briksha Prasad Nirala W/o Krishna Prasad, Resident of Vill.- Salaiya Khurd, P.S.- Fathepur, Distt.- Gaya

... .. Respondent/s

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with

Letters Patent Appeal No. 760 of 2019

In

Civil Writ Jurisdiction Case No.16641 of 2009

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Sarita Devi @ Sarita Kumari aged about 31 years, Wife of Raj Kishore Bharti Resident of Village-Barua, P.O. and P.S.-Fatehpur, District-Gaya

... .. Appellant/s

Versus

1. The State of Bihar 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 Panchayat Raj Officer Gaya
7. The Block Development Officer Fatehpur Block, District-Gaya



8. The Sarpanch Panchayat Salaiyakal, Block-Fatehpur, District-Gaya
9. Saroj Kumari D/o Ram Briksha Prasad Nirala and Wife of Krishna Prasad
Resident of Village-Salaiya Khurd, P.S. Fatehpur, District-Gaya

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rakesh Narayansingh, Advocate
Mr. Kanhaiya Pandey, Advocate
For the Respondent/s : Mr.Pushkar Narain Shahi (AAG-6)

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 26-08-2019

Re: I.A. No. 2 of 2019 in L.P.A. No. 728 of 2019

Heard learned counsel for the appellant.

2. The appeal is reported to be delayed by 47 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 02 of 2019 stands allowed accordingly.

L. P.A. Nos. 728 of 2019 and 760 of 2019

These two appeals have been filed in relation to a dispute of appointment on the post of Secretary of the Gram Kachahary of a village governed by the Bihar Gram Kachahary Secretary (Appointment, Service Condition and Duty) Rules,



2007. The appellant Sarita Kumari contends that the appointment of Saroj Kumari and her continuance were invalid for all the reasons for which grounds were taken in the writ petition filed by Sarita Devi being C.W.J.C. No. 16684 of 2010.

2. Saroj Kumari had earlier filed C.W.J.C. No. 16641 of 2009 praying for quashing a part of the letter/order dated 31st August, 2004 issued by the Block Development Officer, Fatehpur, whereby she apprehended the termination of her services on account of the amendment brought about in Rule 5 (ka) of the 2007 Rules. The said writ petition was allowed on 26.03.2010.

3. On the other hand, the writ petition filed by Sarita Devi i.e. C.W.J.C. No. 16684 of 2010 came up before a learned Single Judge long after in the year 2008 and the same was disposed of by the following order on 19th June, 2018:

“The petitioner by way of the present writ petition seeks a direction upon the respondents to implement the letter of the District Panchayati Raj Officer, Gaya dated 17.11.2009 whereby and whereunder the appointment of Saroj Kumar has been cancelled and it has been directed that a fresh counseling be held by including the petitioner herein in the selection process and thereafter, appointment letters be issued.



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 Panchayati Raj Officer, Gaya has not been annulled in appeal or set-aside by a competent court of law.

The aforesaid exercise should be carried out within a period of four weeks from today.

With the aforesaid direction, the present writ petition is disposed of.”

4. It is to be noticed that Saroj Kumai was Respondent No. 9 in the said writ petition, but no notices had been issued to her and she remained unrepresented when the aforesaid writ petition was disposed of.

5. Since the direction which was issued in favour of Sarita Devi in C.W.J.C. No. 16684 of 2010 ran counter to the judgment dated 26.03.2010 in C.W.J.C. No. 16641 of 2009,



Saroj Dei preferred a Review Petition and the learned Single Judge on 4th of April, 2019 recalled the judgment dated 19th June, 2018 allowing the Review Application filed by the respondent Saroj Kumari. The said judgment is on record.

6. L.P.A. No. 728 of 2019 has been filed challenging the said order, whereas L.P.A. No. 760 of 2019 has been preferred challenging the order dated 26.03.2010.

7. Learned counsel for the appellant contends that the cause for filing this appeal against the order of 2010 arose only after the Review Application was allowed in April, 2019.

8. Having considered the submission raised what we find is that the appellant is seeking to derive benefit of the judgment dated 19.06.2018 that had been delivered without putting the respondent Saroj Kumari to notice. In this context, we find that the said judgment has been rightly reviewed on 4th of April, 2019 and with the findings recorded therein we do not find any error so as to interfere with the same in L.P.A. No. 728 of 2019.

9. Coming to L.P.A. No. 760 of 2019, the same questions the order dated 26.03.2010. As noticed above, the status of the respondent Saroj Kumari has been acknowledged in the order of review dated 4th of April, 2019 which has been



upheld by us. We see no reason to entertain this appeal after a lapse of 9 years.

10. The appeals lack merit and are accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.08.2019
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