

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.438 of 2018

In
Civil Writ Jurisdiction Case No.23465 of 2011

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Binita Kumari Wife of Awadh Kishore Singh, Resident of Village Saghar,
P.O.- Maghar, P.S.- Bhagwanpur Hat, District- Siwan.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Department of Human Resources Development,
Government of Bihar, Patna.
3. The Collector, Siwan.
4. The District Program Officer Establishment, Siwan.
5. The Block Development Officer, Bhagwanpur Hat Block District- Siwan.
6. The Block Education Extension Officer, Bhagwanpur Hat Block, District-
Siwan.
7. The Mukhia, Gram Panchayat Raj, Saghar Sultanpur Dakshini, Bhagwanpur
Hat Block, District- Siwan.
8. The Panchayat Secretary, Gram Panchayat Raj, Saghar Sultanpur Dakshini,
Bhagwanpur Hat Block, Distr
9. Mithila Kumari, Wife of Sri Suresh Kumar Singh, Resident of Village Jajauli
P.O. Balsohi P.S. Mashrakh District- Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Harsh Anuj, Advocate
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, A.A.G. 15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-01-2019

I.A. No. 3946 of 2018

Having heard learned Counsel for the parties, we are
satisfied that the delay has been sufficiently explained. The delay
condonation application is allowed. The appeal shall be treated to
be within time.



L.P.A. No. 438 of 2018

Heard Shri Harsh Anuj, learned counsel for the appellant.

The background in which this appeal has been filed deserves to be mentioned first before delving into the issue.

The dispute was between the appellant and the Respondent No. 9 about continuance on the post of a Panchayat Teacher in terms of the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006, whereunder both of them were claiming the appointment against the same post. Two writ petitions were filed and, ultimately, to cut the matter short, we may refer to the judgement dated 18th June, 2014 which is impugned in the present appeal in C.W.J.C. No. 23465 of 2011.

Aggrieved by the same judgement, the appellant had earlier preferred Letters Patent Appeal No. 1154 of 2014 which was withdrawn with liberty to file a review application. The said liberty was granted to the appellant when a review application was filed. The review application was finally heard and rejected on 7th February, 2018. We may put on record that the main ground for review sought by the appellant was that the learned Single Judge, while disposing of writ petition, had called upon



the Principal Secretary of the concerned Education Department to examine the claim of the appellant and Respondent No. 9 and pass appropriate orders. It was urged on behalf of the appellant-applicant that the learned Single Judge could not have issued directions contrary to law, thereby conferring a jurisdiction on the Principal Secretary, who otherwise was not possessed of any such power inasmuch as a right of appeal was conferred on an aggrieved person that could be availed in terms of the statutory provisions that were available in the event there was a dispute relating to such appointment. The argument, therefore, was that the judgement of the learned Single Judge deserved to be reviewed as the same amounted to conferring a jurisdiction on an authority which otherwise was a statutory right of appeal before an Appellate Authority provided to the aggrieved person.

Learned counsel for the appellant has cited the Full Bench Judgement in the case of Kalpana Rani Vs. State of Bihar reported in 2014 (2) PLJR, Page 665. The learned Single Judge who heard the review petition dealt with this matter threadbare and, ultimately, held that since the appellant-applicant had participated in the proceedings and had acquiesced to the order of the learned Single Judge, therefore, it was not possible to gather any error in the order passed by the Principal Secretary which



was on the basis of the directions issued by this Court. While rejecting the review application, the learned Single Judge, however, recorded that there was no dispute with regard to the proposition of law as canvassed by the learned counsel for the appellant, yet on account of the facts peculiar to this case and the law that was referable in this regard, the review application was rejected.

Unfortunately, no challenge has been raised to the order passed on the review application dated 7th of February, 2018. The present appeal has been preferred against the original judgement of the learned Single Judge dated 18th June, 2014, praying for condoning the delay as well as also assailing the said judgement on merits.

In the background aforesaid, when the very same issue has been contested in the review application and a pronouncement has been rendered interparties, then the said judgement on the review petition would bar the taking of any such plea unless the said judgement is also challenged. As noted above, there is no challenge raised to the said judgement on the review application. Consequently, it would be a futile exercise for us to entertain this appeal in order to enable the appellant to raise a challenge to the original judgement dated 18th June, 2014



inasmuch as the judgement, even though in a review application, decides the lis between the parties on the same issue which is now sought to be canvassed before this Court. Had the aforesaid judgment been challenged, it is quite possible that the matter could have been examined in the light of the Full Bench Judgement in the case of Kalpana Rani (Supra) and on the line of the principle that ‘when an act is required to be done in a particular manner, then it can be done in that manner alone’, as propounded way back in 1876, in the case of Taylor Vs. Taylor 1876 Chancery Division, page 476. Nonetheless, in the absence of any such challenge raised to the order dated 07.02.2018, in view of what has been said above, leaving the question of law raised to be addressed in an appropriate case, we do not find any reason to entertain this appeal, which is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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