

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.60 of 2019

In
Civil Writ Jurisdiction Case No.22132 of 2014

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Kartik Narayan Bhangha S/o Bhola Mahto Resident of Vill - Agrail, P.O. Champapur, P.S. Baligaon, District - Vaishali, Bihar.

... .. Petitioner

Versus

1. The State of Bihar and Ors through Chief Secretary, Old Secretariat, Patna
2. The Director General of Police, Bihar, PATNA
3. The Additional Director General of Police, Bihar, Military Police, Bihar, Patna.
4. Mr. Arvind Pandey, I.P.S. the then D.I.G. B.M.P. Chairman of the three men Enquiry Committee at present Additional Director General Weaker Section, Govt. of Bihar, Old Secretariat, Patna. (NOW)- Mr. Arvind Pandey, D.G.-cum Commissioner in Civil Defense, through The Director General of Police, Old Secretariat, Patna
5. The Inspector General, Bihar Military Police, Bihar, Patna 4th. Floor, Pant Bhawan, Bailey Road, Patna
6. Mr. Pankaj Darad, I.P.S. the then D.I.G. B.M.P. Member of the three men Enquiry Committee through the Director General of Police, Old Secretariat, Patna. (NOW)- Mr. Pankaj Darad, The Inspector General of Darbhanga Zone, through the Director General of Police, Old Secretariat, Patna
7. Mr. Ajay Kumar, the then Commandant, Bihar Military Police-13 Darbhanga and Member of the Enquiry Committee. (NOW)- Mr. Ajay Kumar, the then Commandant, Bihar Military Police-13 Darbhanga and Member of the Enquiry Committee, through the Director of Police, Old Secretariat, Patna
8. The Commandant, Bihar Military Police-13, Darbhanga, Bihar
9. The Deputy Superintendent of Police, Bihar Military Police-13, Darbhanga, Bihar
10. The Subedar, Bihar, Military Police-13 Darbhanga.
11. Nemnat Hussain Khan S/o Noor Mohammad Resident of Vill.- Ahilwara, P.S. Biraul, Dist.-Darbhanga
12. Kripa Shankar Ram S/o Late Mangru Ram Resident of Mohalla-Shyamchak, P.O. Chapra, P.S. Bhagwan Bazar, Dist.-Saran (Bihar) Correct present address-Village Mathiyapur, Post Jamsaut, Patna (Bihar)
13. Suman Kumar Jha S/o Shri Phul Narayan Jha Resident of Village-



- Abrur, P.O. Akbarpur Bank, P.S. Biraul, Dist.-Darbhanga (Bihar). (Correct father name and present address)-Suman Kumar Jha, S/o Shri Phool Narayan Jha, Age 28 years, Gender-Male, Resident of Village and P.O.- Akabarpur Bank, P.S. Biraul, Dist.-Darbhanga (Bihar).
14. Sumit Kumar S/o Vidyanand Singh Resident of Village-Sri Rampur Sudhi, P.O. Temtha, P.S. Pa, Dist.-Khagaria(Bihar). (Correct present address)- Resident of Village-Shri Rampur Thuthi, P.O. Temtha, P.S. Parbatta, Dist.-Khagaria(Bihar)
15. Roshan Kumar S/o Late Chalitar Sahu Resident of Village-Nainaghat, P.O. Mainghat, P.S. Sadar, Dist.-Darbhanga. (Correct name, fathers name and address)- Raushan Kumar S/o Krishna Singh age 29 Years, Gender-male, Resident of Village Rasalpur P.O. Manpur, P.S. Mofasil, Dist.-Gaya(Bihar)
16. Raj Kumar Sahu S/o Late Chalitar Sahu Resident of Village-Nainaghat, P.O. Nainaghat, P.S. Sadar Darbhanga, Dist.-Darbhanga
17. Ajit Kumar S/o Shri Gonu Singh Resident of Village and P.O. Milki Chak, P.S. Bahadurpur, Dist.-Darbhanga(Bihar). (Current present address)- Viullage Mohanpur Muraul, Post-Kishanpur Madhuban, P.S. Kudhani, Dist.- Muzaffarpur(Bihar)

... .. Opposite Parties

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with

CIVIL REVIEW No. 62 of 2019

In

Civil Writ Jurisdiction Case No.22132 of 2014

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1. Kripa Shankar Ram and ors Resident of Mohalla - Shyamchak, P.O. - Chapra, P.S. - Bhagawan Bazar, District - Saran. Correct present address Village Mathiyapur, Post Jamsaut, Patna
2. Suman Kumar Jha S/o Shri Phul Narayan jha Resident of Village Abrur, P.O Akbarpur Bank, P.S Biraul, District Darbhanga Bihar Correct fathers name and present address Suman Kumar Jha S/o Shri Phool Narayan Jha , Resident of village and P.O Akabarpur Bank , P.S Biraul District Darbhanga Bihar
3. Sumit Kumar S/o Vidyanand Singh Resident of Village Shri Rampur Sudhi , P.O Temtha, P.S Pa , District Khagaria Bihar Correct Present address R/o village Shri Rampur Thuthi, P.O Temtha, P.S parbatta, District Khagaria Bihar
4. Roshan Kumar S/o Late Chalitar Sahu Resident of Village Nainaghat , P.O Mainghat, P.S Sadar , District Darbhanga Correct name fathers name and address Raushan kumar S/o Krishna Singh Resident of Village Rasalpur P.O Manpur , P.s Mofasil, District Gaya, Bihar
5. Raj Kumar Sahu S/o Late Chalitar Sahu R/o Village Nainaghat , P.O



Nainaghat,P.S Sadar Darbhanga,District Darbhanga

6. Ajit Kumar S/o Shri Gonu Singh R/o Village and P.O Milki Chak P.S Bahadurpur,District Darbhanga Bihar Current present address Village Mohanpur Muraul Post Kishanpur Madhuban,P.S Kudhani,District Muzaffarpur Bihar

... .. Petitioners

Versus

1. The State of Bihar and Ors through chief Secretary ,Old Secretariat ,Patna
2. The Director General of Police Bihar Patna
3. The Additional Director General of Police , Bihar Military Police ,Bihar Patna
4. Mr.Arvind Pandey I.P.S the then I.G B.M.P chairman of the three men Enquiry Committee at present Additional Director General Weaker Section,Govt of Bihar,old Secretariat ,Patna Now Mr.Arvind pandey D.G Cum Commissioner in Civil Defence,through the Director General of Police old Secretariat patna
5. The Inspector General Bihar Military Police,Bihar patna,4th floor pant bhawan,Bailey Road,patna
6. Mr.Pankaj Darad I.P.S the then DIG B.M.P Member of the three Men Enquiry Committee through the Director General of Police Old Secretariat,Patna Now. Mr.Pankaj Darad, The Inspector General of Darbhanga Zone,through the Director General of Police ,Old Secretariat ,Patna
7. Mr.Ajay Kumar the then Commandant Bihar Military Police-13 Darbhanga and Member of the Enquiry Committee Now Mr.Ajay Kumar, the then Commandant Bihar Military Police -13 Darbhanga and Member of the Enquiry Committee,through the Director General of Police,Old Secretariat,Patna
8. The commandant Bihar Military Police-13,Darbhangha,Bihar
9. The Deputy Superintendent of Police Bihar Military Police-13,Darbhangha,Bihar
10. The Subedar, Bihar Military Police-13 Darbhanga
11. Nemnat Hussain Khan, S/o Noor Mohammad Resident of Village Ahilwara,P.S Biraul,District Darbhanga
12. kartik Narayan Bhangha s/o Shri Bhola Mahto R/o Village Agrail P.O Champapur,P.S Baligaon,District Vaishali Bihar

... .. Opposite Parties

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Appearance :



(In CIVIL REVIEW No. 60 of 2019)

For the Petitioner/s : Mr. Abadh Kishor Singh, Adv.
: Mr.Kamlesh Kumar Sharma, Adv.
For the Opposite Party/s : Mr.Prabhat Kumar Verma (Aag3)

(In CIVIL REVIEW No. 62 of 2019)

For the Petitioner/s : Mr. Abadh Kishor Singh, Adv.
: Mr.Kamlesh Kumar Sharma
For the Opposite Party/s : Mr.Prabhat Kumar Verma (Aag3)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

- 7 04-03-2021 1. Heard Mr. Abadh Kishor Singh, learned counsel
for the petitioners and Mr. Prabhat Kumar Verma, learned
Additional Advocate General No. 3 for the State.
2. The above two review petitions have been filed
before this Court against the orders dated 10.02.2016
passed by late Hon'ble Mr. Justice Ajay Kumar Tripathi (as
he then was) in C.W.J.C. No. 22132 of 2014 as also the
Division Bench judgment dated 07.07.2017 in batch of
L.P.As namely, L.P.A. Nos. 647 of 2016 and 920 of 2016,
wherein the order of the learned Single Judge has been
affirmed and upheld.
3. The learned Single Judge in his order dated
10.02.2016 had dismissed the writ petition on the ground
that in the earlier round of litigation, a direction had been
given for constituting a committee for re-examination of the
factual position whether the candidates / petitioners had



any skill to demonstrate or perform as Buglers for which they had been selected. The order goes on to state that a three member committee was constituted, which was headed by the Inspector General of Police and a detailed report had been brought on record. The report, according to the learned Single Judge, supported the decision dated 07.02.2014 which was under challenge. The learned Single Judge therefore came to the conclusion that it was difficult to substitute his wisdom for the opinion of the expert committee or to override the recommendation of such committee which had found that the petitioners were absolutely incapable of playing Bugle for which they had been appointed.

4. In appeal, the Division Bench of this Court also relied upon the report of the Three Member inquiry committee which had indicated large scale irregularities in the selection process which had led to the cancellation of the entire process of selection.

5. The appeals therefore were dismissed and the order passed by the learned Single Judge was upheld.



6. Before the Hon'ble Supreme Court of India, it was contended by the petitioners that certain wrong facts were recorded by the High Court and that there was no report of the committee on record on which the Single/Division Bench had relied upon to dismiss the case of the petitioners. On this assertion alone, the petition was permitted to be withdrawn, giving the liberty to the petitioners to approach the High Court by filing appropriate review petitions.

7. Learned counsel for the petitioners has submitted that in the first instance, there is an error apparent in the order of the learned Single Judge wherein it has been recorded that on the directions of the Court in the earlier round of litigation, a three member committee was constituted. Learned counsel for the petitioner has submitted that a decision had been taken at the official level and the committee had already been constituted which was independent of any direction passed by this Court. He further submits that the report of the three member committee was surreptitiously and hurriedly filed in order to



avoid any contempt proceedings against the authorities. It was further attempted to be demonstrated by learned counsel for the petitioners that some of the names of the complainants /petitioners were later interpolated and that there was no signature of one of the members of the Three Member committee. He has also referred to various complaints by the petitioners alleging that they had not been subjected to any test before the committee and, therefore, the conclusion arrived at by the committee was not only incorrect in its terms but was brought into existence only to deflect the course of justice when a contempt petition had been filed for not giving effects to the orders of the Court. Lastly, it has been submitted on behalf of the petitioners that assuming but not admitting the fact that the report of the three member committee existed in the records, in a review jurisdiction, this Court would be perfectly within its rights to enter into those factual aspects also which has escaped the attention of learned Single Judge as well as the Division Bench, causing serious prejudice to the case of the petitioners.



8. Mr. Singh, learned counsel for the petitioners has also referred to a Judgment of Hon'ble Supreme Court of India in the case of **Board Of Control For Cricket, India & Anr. vs Netaji Cricket Club & Ors, AIR 2005 SC 592** wherein it has been held that Section 114 of the Code of Civil Procedure empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code of Civil Procedure in terms whereof it is empowered to make such order as it thinks fit.

9. Order 47, Rule 1 of the Code of Civile Procedure provides for filing an application for review which would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

10. The Hon'ble Supreme Court had gone onto elucidate that in the event of a mistake on the part of the



court, which would include a mistake in the nature of the undertaking also, it may call for a review of the order. Thus an application for review, it has been argued, would also be maintainable, if there exists sufficient reasons to do so and what would constitute the sufficient reasons would depend on the facts and circumstances of the each case.

11. Learned counsel for the petitioners has argued that the contents and ambit of Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. The purpose and rationale behind this exposition is in keeping with the doctrine of "actus curiae neminem gravabit"

12. As opposed to the aforesaid contention, Mr. Prabhat Kumar Verma, learned Additional Advocate General No. 3 has submitted that the petitioners did not state correct facts before the Hon'ble Supreme Court in as much as a blanket and misleading statement was given that there was no report of the inquiry committee on record. Had the petitioners approached the Hon'ble Supreme Court with clean hands, they would have questioned the correctness of the



report or the correctness of the orders passed by the different Benches of the Court relying on such half baked report which may have been brought into existence collusively or surreptitiously. Perhaps, an impression was given before the Hon'ble Apex Court that there was no report of Three Member inquiry committee on record, which persuaded the Hon'ble Supreme Court to allow the petitioners to withdraw their application in order to prefer an appropriate review petition before the High Court.

13. Mr. Verma has next contended that in the review jurisdiction, this Court would be absolutely loath to get into the factual question of the report being collusive or bad and as mandated by the Hon'ble Supreme Court and circumscribed by the provisions contained in Order 47, Rule 1 of the Code of Civil Procedure but this Court would only be required to confirm the basic fact, namely, the existence the report of Three Member inquiry committee, which had been relied upon by the learned Single Judge or the Division Bench in the past. As a matter of fact, it has been urged on behalf of the State that no sooner it was found that the



empanelment of the Buglers was faulty as most of them did not have the basic idea of the trade, an inquiry committee was constituted under the directions of the Court, which found that the petitioners were completely lacking in such quality which could have justified their empanelment as Buglers the entire panel was scrapped. This fact has been brought to the notice of the Court only to demonstrate that the police department was not playing hide & Seek at any point of time and did not adopt any selective approach of not giving appointment to some and accommodating others. In the event of the entire process being scrapped and the posts being re-advertised, there cannot be any question of malafides or of any breach of law. He has further submitted that in cases of mass irregularity in an appointment process, it is only appropriate that entire process is scrapped and while doing so, even if it causes discomfort to those, who may be liable on all counts, as part of the quest for maintaining the transparency and purity of the process of selection, such decision for scrapping the entire process of selection and the panel framed thereafter cannot be



questioned as being administratively or legally bad.

14. On the aforesaid grounds, Mr. Verma has contended that these review petitions have no merit and therefore the same be dismissed.

15. I have perused the records of this case and have found that the report of the Three Men committee could have been more precise and pointed. Nonetheless, it was absolutely wrong for the petitioners to have contended before the Hon'ble Supreme Court that there was no report at all, putting a question mark on the correctness of the orders passed by the learned Single Judge or the Division Bench in the appeal. The report may not be to the liking of the petitioners or may not be absolutely correct but making a statement that there was no report at all, was not justified.

16. Nonetheless, since the matter has come up in review, the detailed argument of the petitioners has been heard. All that the learned counsel for petitioners had to contend is that there were numerous instances which are apparent from the records of the case which make the report suspect on some score. This Court would not like to get into



such factual aspects in view of the order of the Hon'ble Supreme Court granting permission to the petitioners for approaching this Court in review jurisdiction on the issue of non-existence of any Inquiry committee. That some of the failings in the report is not being looked into at this stage even it be for the larger interest it is only for the reason that the entire panel was scrapped and posts were re-advertised. This Court tehrefore does not see any malafides or fault with the decision of the authorities in scrapping the entire panel and going for a fresh advertisement for such posts.

17. No case has been made out for review of the order passed by the learned Single Judge in C.W.J.C. No. 22132 of 2014 or by the Division Bench in L.P.A. Nos. 647 of 2016 and 920 of 2016.

18. The review petitions are therefore dismissed.

(Ashutosh Kumar, J)

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