

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15841 of 2018

=====

Manoj Kumar Sharma Son of Shri Ramadhin Prasad Sharma, Resident of Village- Saini Tola, Post Office- Simri Bakhtiyarpur, Police Station- Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors.
2. The District Teacher's Appointment Appellate Tribunal, Saharsa through its Member.
3. The Block Development Officer B.D.O., Simri Bakhtiyarpur Block, Saharsa.
4. The Mukhiya, Gram Panchayat Bakhtiyarpur South, Post Office- Simri Bakhtiyarpur, District- Saharsa
5. The Panchayat Sachiva, Gram Panchayat Bakhtiyarpur South, Post Office- Simri Bakhtiyarpur, District-
6. The Block Education Officer, Simri Bakhtiyarpur, Post Office- Simri Bakhtiyarpur, District- Saharsa
7. The In-charge Head Master, Upgraded Middle School, Saini Tola, Post Office- Simri Bakhtiyarpur, District-
8. Anil Kumar, Son of Shri Chhedi Sah, Resident of Village- Kanu Tola, Simri Bakhtiyarpur, Post Office- Simri Bakhtiyarpur, District- Saharsa.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Syed Masleh-Uddin Ashraf, Adv.
For the State	:	Mr. Subhash Chandra Mishra, SC16
For the Respondent No.8	:	Mr. Chandra Mohan Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

- 2 12-09-2022 1. The petitioner has preferred this writ petition in a situation where he submits that there is no remedy available to him in law.
2. The facts required to be noticed are that the petitioner has preferred an appeal before the District Appellate Authority, Saharsa challenging the appointment granted to the



respondent. The same was dismissed on 22nd December 2010, whereafter he preferred writ petition before this High Court bearing no. 1714/2011. Another person namely Subhash Kumar Bhagat also preferred the writ petition assailing the order of the District Appellate Authority bearing no. 1087/2011. Both the writ petitions came to be decided by a common order passed by the Hon'ble single Judge on 20th December 2011. He allowed both the writ petitions by a common order and directed and cancelled the appointments of the respondent and further directed to consider the case of the petitioners in both the cases and if they are found fit for appointment, it was directed that they should be granted appointment. Accordingly, the petitioner came to be appointed on the post.

3. In the meanwhile, it appears that both the respondents 6 and 7 in the writ petition, whose appointment was cancelled, preferred an LPA no. 295/2012 challenging the order passed in CWJC no. 1087/2011. LPA against the order in CWJC no. 1714/2011 (which was decided together) was not filed.

4. The appeal was allowed. Order passed by the single judge cancelling the appointments of the respondent was set aside be consequential. Thus, the order dated 20th December 2011 passed in favour of petitioner in his own writ petition



CWJC 1714/11 was brought at naught.

5. In consequence of the order passed by the Division Bench the appointment granted to the petitioner was cancelled. He preferred contempt petition before this court. However, the learned single judge held that the petitioner may be technically right that the order passed in the petitioner's favour has not been set aside as no LPA has been preferred, but contempt could not be said to be made out as the order of the single judge stood already set aside. He left the petitioner to take legal recourse.

6. In the aforesaid circumstances, present writ has been filed to set aside the termination, I have considered the submissions advanced by the learned counsel for the petitioner. This court does not agree with the counsel that there is no remedy available to the petitioner. However, this court is further convinced that the remedy which the petitioner has taken of preferring this writ petition is not the proper forum or proper remedy available to him. In a writ petition this court would not set aside an order passed in LPA, nor it would direct the respondents to implement an order passed earlier by the single judge which has been found to be unjustified by the Division Bench though in a separate appeal.

7. In the opinion of this court, the petitioner cannot



claim advantage of this writ petition having been allowed merely because an appeal was not preferred against that order. It cannot be contended that the order of single Judge survives after the same has been quashed by the Division Bench. The Division Bench having examined the contents of the judgement passed in bunch of writ petitions would mean that the order passed in all the writ petitions has been examined and therefore, the theory of the merger would apply the judgement passed by the Division Bench will have application to all the writ petitions which have been commonly decided.

“22. We may refer to a recent decision, by a two-Judge Bench, of this Court in V.M. Salgaocar & Bros. (P) Ltd. v. CIT holding that when a special leave petition is dismissed, this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. What the Court means is that it does not consider it to be a fit case for exercising its jurisdiction under Article 136 of the Constitution. That certainly could not be so when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case the Supreme Court upholds the decision of the High Court or of the Tribunal. This doctrine of merger does not apply in the case of dismissal of a special leave petition under Article 136.



When appeal is dismissed, order of the High Court is merged with that of the Supreme Court. We find ourselves in entire agreement with the law so stated. We are clear in our mind that an order dismissing a special leave petition, more so when it is by a non-speaking order, does not result in merger of the order impugned into the order of the Supreme Court.”

8. In view of above settled position of law, the forum chosen by the petitioner is wholly misconceived.

9. The writ petition is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Sachin/shaswat
Item No. 22

U			
---	--	--	--

