

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.135 of 2019

In
Civil Writ Jurisdiction Case No.15679 of 2017

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Sandeep Kumar @ Sandeep Kumar Mishra Son of Sri Markandey @
Markandey Mishra Resident of Baherwa Mahuawa Mahuwan P.S.-
Panchdeori, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar Through the District Magistrate, Gopalganj.
2. The District Education Officer Gopalganj.
3. The District Programme Officer Establishment, Gopalganj.
4. The Block Education Officer Panchdeori, Gopalganj.
5. Sanjai Kumar Son of Ram Chandra Prasad Rai Resident of Village-
Patkhauli, Post Office Baghi Bazar, P.S.- Kataiya, District- Gopalganj.

... .. Opposite Party/s

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with
Miscellaneous Jurisdiction Case No. 3577 of 2018
In
Civil Writ Jurisdiction Case No.15679 of 2017

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Sanjai Kumar Son of Ram Chandra Prasad Rai, Resident of Village-Patkhauli,
P.S. Kataiya, Distirct-Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The District Magistrate, Gopalganj, Mr. A. K.
Parashar and Ors
2. Sri Akhileshwar Prasad Singh the Distirct-Education Officer, Gopalganj.
3. Smt. Punam Chaudhary the District-Education Officer, Gopalganj.
4. Sri the Block Education Officer Panchdeori, P.S. Panchdeori, District-
Gopalganj.

... .. Opposite Party/s

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Appearance :

(In CIVIL REVIEW No. 135 of 2019)

For the Petitioner/s : Mr.Sanat Kumar Mishra, Adv.

For the Opposite Party/s : Mr.AAG-15

(In Miscellaneous Jurisdiction Case No. 3577 of 2018)

For the Petitioner/s : Mr. Bipin Bihari Singh, Adv.

For the Opposite Party/s : Mr.Shrimati Shilpa Singh Ga 12

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA

ORAL ORDER

5 27-07-2022

1. Heard the parties.

2. Apparently, the review petitioner and the original writ petitioner have a dispute inter se with regard to the post on which the review petitioner claims that he was appointed, while the writ petitioner had in his petition claimed salary for the post.

3. Learned counsel appearing for the review petitioner submits that he was not impleaded as a party to the writ petition preferred by the respondent Sanjai Kumar and, therefore, he has preferred the present review petition for review/recalling of the order dated 22.2.2018 and further grant him an opportunity to put up his submissions before the Court on merits.

4. Learned counsel appearing for the respondent writ petitioner, submits that the prayer made by the petitioner was innocuous and there was no claim made by the writ petitioner against the present review petitioner. Learned counsel, therefore submits that the present review petitioner was neither a necessary nor a proper party and was not required to be impleaded in the writ petition and, therefore, the order passed in his favour by the Court does not warrant review on the ground that the review petitioner was not heard.

5. Learned counsel has also submitted that review petitioner had no right to be posted on the post on which the

petitioner was working. He has taken this Court to the various orders and submits that the order passed by the District Appellate Authority was challenged by the review petitioner before this High Court and the same was withdrawn vide C.W.J.C. No. 3438 of 2014.

6. I have carefully considered the submission, in the case of **(1994) 2 SCC 622 (Ram Janam Singh Vrs. State of Uttar Pradesh & Another)**. The law has been settled that if a person has not been impleaded as a party in a writ proceedings, the only option available with him to either file a review petition or he may file to leave appeal.

7. In **AIR 1963 SC 786 (Udit Narayan Singh Malpaharia Vrs. Additional Member Board of Revenue, Bihar & Another)**, the Hon'ble Apex Court has laid down who are necessary and proper parties to the proceedings and held as under:-

“9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before- it. In a writ of certiorari. the defeated party seeks for

the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it ? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by I the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order but whose presence may facilitate the settling of all the questions that may- be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded

therein.”

8. Taking queue from above, this Court finds that in the earlier round of litigation taken up by the review petitioner, the writ petitioner was impleaded as a party. The review petitioner is claiming appointment on the post for which the District Appellate Authority has passed an order in favour of the writ petitioner. It is also noted that before the District Appellate Authority the review petitioner was not impleaded as a party.

9. Considering that there is already inter se dispute between the two persons for the same post is held that the review petitioner is a necessary party for disposal of the case. He, therefore, was required to be impleaded in the writ proceedings in view of the law laid down by the Hon'ble Supreme Court in **(1984) 4 SCC 251 (Prabodh Verma & Ors. Vrs. State of Uttar Pradesh & Ors.)**.

10. Keeping in view above, it deemed appropriate to given an opportunity of hearing to the review petitioner in the writ proceedings taken up by the writ petitioner Sanjai Kumar.

11. Accordingly, this review petition is allowed. The order passed by the Court dated 22.02.2018 is recalled.

12. The Registry is directed to restore the writ petition to its original number and list the case again for Admission.

13. The writ petitioner present respondent no. 5 is directed to file amended cause title in the original writ petition impleading the review petitioner as a party.

14. The Review Petition stands allowed.

15. List the M.J.C. along with the writ petition.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 72

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