

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3628 of 2019

In
Civil Writ Jurisdiction Case No.8560 of 2017

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1. Sunil Kumar Sharma, S/o Late Khanatar Mistri, resident of Village- Sabout Choti Hat, P.O. P.S.- Sabour, District- Bhagalpur.
 2. Geeta Kumari, W/o Sunil Kumar Sharma, resident of Village- Sabout Choti Hat, P.O. P.S.- Sabour, District- Bhagalpur.
 3. Lalita Kumari, W/o Shyam Kumar Sah, resident of Village- Sabour, Prem Nagar, P.O. P.S.- Sabour, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Sri Satish Chandra, Commissioner-cum-Secretary, Education Department, Bihar, Patna
2. R. K. Mahajan Principal Secretary, Education Department, Govt. of Bihar, Patna
3. Anjani Kumar Singh, the Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Singh, Advocate
For the Opposite Party/s : Mrs. Binita Singh, SC- 28

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 14-12-2022

The petitioners have filed the present contempt application under Article 215 of the Constitution of India and Section 12 of the Contempt of Courts Act, 1971, alleging deliberate disobedience of an order passed by a coordinate Bench of this Court dated 12.02.2018 in CWJC No. 8560 of 2017.

2. In order to address the main issue which the petitioners have attempted to raise in the present contempt application and considering the stand of the State of Bihar in



opposition, it is considered desirable to reproduce the said order dated 12.02.2018 which reads as under :-

"The parties are in agreement that the present writ petition can be disposed of in terms of the order dated 03.03.2017 passed in C.W.J.C. No. 384 of 2017 and analogous cases and the judgment of the learned Division Bench dated 23.01.2018 passed in L.P.A. No. 1047 of 2017.

Accordingly, the present writ petition is disposed of in terms of the aforesaid two orders passed in the writ petition and the L.P.A.

The State Government should take steps in the light of the aforesaid two judgments and redress the grievanes of the petitioners herein." (Underscored for emphasis)

3. The orders of this Court dated 03.03.2017, passed in CWJC No. 384 of 2017 and the analogous cases and the order dated 23.01.2018 passed by a Division Bench in LPA No. 1047 of 2017 have been brought on record by way of Annexures to the present contempt application.

4. From the orders of this Court dated 03.03.2017, passed in CWJC No. 384 of 2017 and 23.01.2018 in LPA No. 1047 of 2017 it is easily discernible that the controversy in those cases related to absorption of such Instructors who were appointed under a scheme of the Government of India in the name of 'Non-



Formal Education Programme' and were disengaged on the closure of the scheme in the year 2001. The said writ petition being CWJC No. 384 of 2017 was disposed of, upon taking into account an order passed by this Court in CWJC No. 8110 of 2001 in view of the information furnished to the Court that the State was actively considering the issue of absorption of supervisors appointed under the said programme. The Court in its order dated 03.03.2017 further noted an order passed in CWJC No. 8418 of 2010, whereby the State Respondents were directed to consider the cases for absorption of the Instructors, in the background of the fact that supervisors engaged in the said programme were absorbed.

5. An appeal under the Letters Patent of this Court giving rise to LPA No. 1489 of 2011 preferred by the State against the said coordinate Bench decision dated 03.03.2017 of this Court in CWJC No. 8418 of 2010 was dismissed with certain directions. A Special Leave Petition preferred under article 136 of the Constitution before the Supreme Court was also dismissed. It is noted that the Supreme Court, while dismissing the Special Leave Petition, had observed that the order of this Court had been passed in relation to only such persons who had approached the High Court. This led to filing of a petition under Article 32 of the



Constitution of India before the Supreme Court giving rise to Writ Petition (Civil) No. 883 of 2016 seeking the similar relief. The said writ petition was, however, permitted to be withdrawn with a liberty to approach this Court. In the meanwhile, MJC No. 3765 of 2016 was filed by one Mira Kumari complaining that the relief which was granted by this Court was being restricted only to such persons who were party to the proceedings and it was being denied to other similarly situated persons.

6. This Court, noticing the Supreme Court's decision in case of Ashwani Kumar and others vs. State of Bihar and others (AIR 1997 SC 1628) wherein it was held that all similarly situated must be treated similarly, ordered for granting similar relief to others. Upon noticing this Court's order in MJC No. 3765 of 2016, the learned Single Judge had passed following order on 03.03.2017 in CWJC No. 384 of 2017

" In view of the developments noted above, the case of the petitioners would also require a consideration by the respondents. It is stated by Mr. Mishra that although these petitioners have already applied but the matter is not being disposed of.

Having heard learned counsel for the parties and considering that the issue stands settled, I deem it proper to dispose of all these writ petitions with a direction to respondents no. 2 to 4 to consider the claim of the petitioners in



the backdrop of the issues settled by the Court and dispose of the same within a maximum period of three months from the date of receipt/ production of a copy of this order.

All the writ petitions are accordingly disposed of."

7. The Letters Patent Appeal preferred by the State of Bihar against the said decision of this Court rendered in CWJC No. 384 of 2017 and other analogous cases came to be dismissed by a Division Bench of this Court by an order dated 23.01.2018 which reads as under :-

"The only objection raised in this appeal is that the Hon'ble Supreme Court in S.L.P. (Civil) No.32079 of 2015, while dismissing the petition of the State Government, has only restricted the benefit to such of the employees who had approached the High Court, but thereafter on liberty granted by the Hon'ble Supreme Court in a petition filed directly under Article 32 of the Constitution, being Writ Petition (Civil) No.883 of 2016, the matter was again considered by a Co-ordinate Bench of this Court in various cases, including M.J.C. No.3765 of 2016 wherein Division Bench considered all these issues and the benefit was granted. Even this Bench on 12.1.2018 in L.P.A. No.1968 of 2016 has granted benefit to certain petitioners who had approached this Court subsequently.

That being the factual



position, we see no reason to interfere into the matter. In fact, while deciding the writ petition the learned Writ Court has taken note of all these factors and allowed the benefit to the employees, primarily in view of the Division Bench clarification recorded in M.J.C. No.3765 of 2016 which has been reproduced in extenso by the learned Writ Court, and taking note of all these factors, we are not inclined to interfere into the matter.

Accordingly, the appeal stands dismissed."

8. It is apparently the case of these petitioners that in the light of this Court's order dated 12.02.2018 passed in CWJC No. 8560 of 2017 their cases were also required to be considered in accordance with the direction issued by this Court in its order dated 03.03.2017 in CWJC No. 384 of 2017 which came to be affirmed by a Division Bench of this Court in LPA No. 1047 of 2017. It is the grievance of these petitioners that the opposite parties have deliberately disobeyed this Court's order dated 12.02.2018 by not absorbing their services, who were engaged under Non-Formal Education Programme as Instructors.

9. I have heard Mr. Rajiv Ranjan Singh, learned counsel appearing on behalf of the petitioner and Mrs. Binita Singh, learned SC-28 representing the State of Bihar.

10. A show cause reply has been filed on behalf of the



opposite parties, wherein it has been stated that after disposal of LPA No. 1047 of 2017 (The State of Bihar and others vs. Harendra Mishra and others) vide order dated 23.01.2018, the State had preferred a civil review application giving rise to Civil Review No. 59 of 2018. When the review application was taken up on 27.06.2018, this Court passed the following order :-

"Considering the fact that the Letters Patent Appeal in question was decided without taking into account the fact that MJC No. 3765 of 2016 based on which the order was passed which was in operation and was already stayed by the Hon'ble Apex Court, we direct for listing of the matter after the order is passed by the Supreme Court and till then implementation of the order dated 23.01.2018 passed in LPA No. 1047 of 2017 passed by us shall be kept in abeyance."

11. It is the case of the State thus that the implementation of the order dated 23.01.2018, passed in LPA No. 1047 of 2017 was thus kept in abeyance. The Supreme Court's order dated 26.02.2016, passed in SLP (Civil) No. 32079 of 2015 has been brought on record by way of Annexure-B to the show-cause reply, whereby the Supreme Court had clearly stated that the relief granted by the High Court shall be restricted to those who had approached the High Court and who were heard as well as those who wanted to get themselves impleaded and those too who



had filed applications there, at par with those former as well as all those petitioner Instructors which are pending as on the said date before the High Court but shall not apply to any fresh case either there (before the Supreme Court) or before the High Court. For the benefit of clarity the relevant portion of the Supreme Court's order dated 26.02.2016 is being reproduced hereinbelow :-

"The relief granted by the High Court shall be restricted to those who approached the High Court who were heard as well as who wanted to get themselves impleaded and those who have filed applications here at par with those former as well as all those petitioner Instructors which are pending as on date before the High Court but shall not apply to any fresh case either here or before the High Court.

Pending applications, if any, stand disposed of."

12. It has further been stated that an SLP was preferred against the order of this Court dated 25.01.2017 in MJC No. 3765 of 2016 (Mira Kumari and others vs. The State of Bihar) giving rise to Civil Appeal No. 7351 of 2021. By an interim order dated 08.09.2017, passed by the Supreme Court, this Court's order dated 25.01.2017 in MJC No. 3765 of 2017 was stayed. The Supreme Court finally allowed the special leave petition preferred against the order dated 25.01.2017 (Annexure-C) by an order dated 02.12.2021 passed in Civil Appeal No. 7351 of 2021 (State of



Bihar vs. Mira Kumari), relevant portion of which reads as under :-

"We are of the view that the order passed by this Court dated 26.02.2016 is an order which binds both the State and the Courts including the High Court. It is for the reason that the Court has clearly, while upholding the order dated 11.08.2015, confined the benefit granted vide order to only those persons who have been mentioned specifically in the order.

We notice from the impugned order passed by the High Court that the High Court has not specifically referred to the order passed by this Court dated 26.02.2016 and therefore, not considered the case in the light of the order dated 26.02.2016. We are of the clear view that the order of this Court dated 26.02.2016 cannot be deviated from by the High Court. We think that the High Court has erred in referring to certain general principles by holding that all persons similarly situated whether they have moved the Court or not must be similarly treated. This finding is in teeth of the clear terms of the order passed by this Court dated 26.02.2016."

13. It is the stand of the State of Bihar in its show cause reply that admittedly these petitioners had not approached this Court on or before 26.02.2016 and, therefore, in the light of the Supreme Court's orders dated 26.02.2016 and 02.12.2021 (supra)



they are not entitled to any relief. The State has also relied upon a Division Bench order dated 23.07.2018 passed in MJC No. 809 of 2012 whereby this Court, after having noticed various orders of this Court and the Supreme Court observed that the Supreme Court's order shall be the guiding factor for considering individual writ applications where the petitioners would be first obliged to demonstrate that he/ they had earlier moved this Court or the Supreme Court of India on or before the cut-off-date.

14. It has further been stated that a Division Bench of this Court had again an occasion to consider the matter relating to regularisation/ appointment of Instructors engaged under the Non-Formal Education Programme on a review application registered as Civil Review No. 68 of 2019 (State of Bihar and others vs. Bihar State Non-Formal cum Special Education Instructor Union and others) seeking review of the order dated 23.07.2018 passed in MJC No. 809 of 2012 in the wake of the fact that different orders were being passed by different Benches of this Court. By the judgment and order dated 07.08.2019 passed in Civil Review No. 68 of 2019 a division Bench of this Court reviewed its earlier order dated 23.07.2018 passed in MJC No. 809 of 2012 and recalled paragraph 29 of the said order.

15. Learned counsel appearing on behalf of the



petitioners has argued that the opposite parties were under obligation to consider the cases of these petitioners in the light of this Court's order dated 12.02.2018 passed in CWJC No. 8560 of 2017, following the decisions of this Court rendered by a learned Single Judge on 03.03.2017 in CWJC No. 384 of 2017 and subsequent Division Bench decision affirming the said order dated 03.03.2017 rendered on 23.01.2018 in LPA No. 1047 of 2017. He has submitted that they are liable for action for committing contempt of this Court for wilful disobedience of this Court's order.

16. Mrs. Binita Singh, learned SC-28 appearing for the State of Bihar, on the other hand, has submitted that it being an admitted position that the petitioners had not approached this Court before the cut-off-date i.e. 26.02.2016, they do not have any claim to be considered for absorption. She has further submitted that this Court's order dated 12.02.2018 has to be read in the light of the developments as noted above, more particularly, the Supreme Court's order dated 26.02.2016 in SLP(Civil) Nos. 32079 of 2015 and the judgment dated 02.12.2021 rendered in Civil Appeal No. 7351 of 2021(State of Bihar and others vs. Mira Kumari) read with the Division Bench judgment of this Court rendered on 07.08.2019, whereby paragraph 29 of the judgment



dated 23.07.2018 rendered in MJC No. 809 of 2012 has been recalled. She has accordingly submitted that no case is made out of deliberate disobedience of this Court's order.

17. Having heard learned counsel for the petitioners and learned SC-28 for the State and having perused the pleadings on record, I am of the view that it is easily discernible that this Court had directed the State to consider the case of these petitioners in terms of the order dated 03.03.2017, passed in CWJC No. 384 of 2017, which was upheld by a Division Bench order dated 23.01.2018, passed in LPA No. 1047 of 2017.

18. From this Court's order dated 03.03.2017, passed in CWJC No. 384 of 2017 it is amply clear that in order to extend the benefit of absorption to such employees who had not approached before the cut-off-date, a coordinate Bench of this Court relied on the order passed by a Division Bench of this Court in case of Mira Kumari in MJC No. 3765 of 2016. The said order was apparently passed in the ignorance of the order dated 26.02.2016 passed by the Supreme Court in SLP (C) No. 32079 of 2015 (State of Bihar and others vs. Prabhat Ranjan and other analogous cases), wherein it was clearly mentioned that the relief granted by the High Court shall be restricted to those who had approached the High Court and who were heard as well as who wanted to get themselves



impleaded and those who had filed applications in the Supreme court etc.. Further while dealing with Civil Review No. 59 of 2018 which had arisen out of LPA No. 1047 of 2017 (State of Bihar and others vs. Harendra Mishra and others) a Division Bench of this Court had ordered for keeping the order dated 23.01.2018 passed in LPA No. 1047 of 2017 in abeyance.

19. Apparently, thus the petitioners could not have been given the benefit of this Court's order dated 23.01.2018 passed in LPA No. 1047 of 2017 in the light of which this Court had directed the State to consider the cases of these petitioners by the aforesaid order dated 12.02.2018 which, according to the petitioners, has been disobeyed.

20. Further, the very basis of extending the benefit of absorption to similarly situated persons based on decision in case of State of Bihar vs. Mira Kumari (supra) in the order dated 03.03.2017 passed in CWJC No. 384 of 2017 has lost its significance in view of the subsequent judgment of the Supreme Court dated 02.12.2021, wherein the Supreme Court noticed that the High Court had not considered the Supreme Court's order dated 26.02.2016 while upholding the order dated 11.08.2015 which was apparently the foundation for this Court to pass the order dated 03.03.2017 in CWJC No. 384 of 2017. The said order



dated 11.08.2015 has merged with the ultimate decision of this Court rendered on 02.12.2021 in case of State of Bihar and others vs. Mira Kumari (supra).

21. This being not in dispute that the petitioners had not approached this Court prior to 26.02.2016, in my considered view, they cannot claim any benefit on the strength of any order on the ground of parity, in the light of the Supreme Court's order dated 02.12.2021.

22. Situated thus, in my opinion, it would be an exercise in futility to keep this contempt proceeding pending. This application for initiation of contempt proceeding, in the background of admitted facts and subsequent developments does not deserve further consideration.

23. The contempt proceeding stands dropped accordingly.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	02.11.2022
Uploading Date	19.12.2022
Transmission Date	NA

