

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24202 of 2018

1. Dhirendra Kumar Yadav S/o Sri Shailendra Prasad Yadav Resident of Village-Dekuli,Dharampur,Ward No.9,PO Kamrauli,PS Piprahi,Dist Sheohar,Presently Working as Librarian in High School,Parsauni Chowki,Dist.Sitamarhi
2. Nitesh Kumar Sri Kedar Prasad Resident of Mohalla-Bhawdepur,Gandhi Chowk,Ward No.17,PO and PS Sitamarhi,Dist. Sitamarhi,Presently Working as Librarian in High School, Bathnaha Dist.Sitamarhi
3. Arbind Kumar Singh S/o Sri Nag Narayan Singh Resident of Ward No.16,Khairwa Khurd,PO and PS Majorganj,Dist.-Sitamarhi,Presently Working as Librarian in High School,Majorganj, Dist.Sitamarhi ,Presently Working as Librarian in High School,Majorganj, Dist.Sitamarhi
4. Rishikesh Anand S/o Sri Uma Shankar Prasad Rersident of Laxman Nagar,behind Kiran Cinema,Ring Bandh,PO and PS Sitamarhi,Dist.-Sitamarhi, ,Presently Working as Librarian in Jageshwar High School,j Bhootahi, Dist.Sitamarhi
5. Rajiv Kumar S/o Sri Saroj Kumar Verma Resident of Mela Road,Bhawadepur Behind Baijnath Nursing Home,PO and PS Sitamarhi,Dist.-Sitamarhi,Presently Working as Librarian in High School,Rewasi, Dist.Sitamarhi
6. Jitendra Kumar S./o Sri Laxmi Sah Resident of Sahu Chowk,Rajopatti Near Telephone Exchange,PO and PS Sitamarhi,Dist.Sitamarhi,Presently Working as Librarian in High School,Purnahiya, Dist.Sitamarhi
7. Mukesh Jha S/o Sri Dhruv Kant Jha Resident of Village and PO Bangaon,PS Bajpatti,Dist.-Sitamarhi,Presently Working as Librarian in High School,Raipur, Dist.Sitamarhi
8. Mukesh Kumar S/o Sri Surendra Singh Resident of Village-Talkhapur,PO and PS Dumra,Dist.-Sitamarhi,presently working as Librarian in Guddar Jagdeo High School,Sonaul Sultan,Dist.-Sheohar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary,Govt. of Bihar,Patna
2. The Principal Secretary Education Department,Govt. of Bihar,Patna
3. The Director,Secondary Education , Education Department,Govt. of Bihar,Patna
4. The District Education Officer, Sitamarhi,Dist.-Sitamarhi
5. The District Education Officer, Sheohar
6. The Deputy Development Commissioner-cum-Chief Executive Officer,Zila Parishad,Sitamarhi,Dist.Sitamarhi
7. The Deputy Development Commissioner-cum-Chief Executive Officer,Zila Parishad,Sheohar,Dist.-Sheohar
8. The Principal, High School,Parsauni Chowki,Dist.-Sitamarhi



9. The Principal, High School,Bathnaha,Dist.-Sitamarhi
10. The Principal, High School,Majorganj,Dist.Sitamarhi
11. The Principal, Jageshwar High School,Bhootahi,Dist.Sitamarhi
12. The Principal, High Schoo Rewasi,Dist,Sitamarhi
13. The Principal, High School,Purnahiya,Dist.Sheohar
14. The Principal, High School,Raipur,Dist.-Sitamarhi
15. The Principal, Guddar Jgadeo High School,Sonaul Sultan,Dist.-Sheohar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam,Adv.
For the State : Mr. Narendra Kumar, AC to GP20
For the Zila Parishad Sheohar: Mr. Mukesh Kumar, Adv.

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 2 21-11-2022 1. The petitioners have submitted that although after litigation ended up to Supreme Court they were appointed under the same selection process. However, their appointment is being treated as fresh and without having been given the benefit of being in the merit in the original selection.
2. Learned counsel submits that once it is found that on account of fault of the respondents, the petitioner was denied appointment, he is entitled for notional continuance of service as well as seniority from the same day though he may not be granted actual pay, notional pay-fixation is required to give to him. Learned counsel relies on an order passed in a similar case in C.W.J.C. 4129/2016 decided by coordinate bench on 03.05.2018.



3. I have considered the submission, the Supreme Court passed a detailed judgment in S.L.P. Civil Appeal 4270/2014, **Naushad Anwar & ors. Vs. State of Bihar & ors.** and connected similar case and after considering all the aspects it allowed the appeals of the petitioner and passed following operative order:

“Para 16: In the result we allow these appeals, set aside the order passed by the High Court and allow Writ Petition 17734 of 2000 with a direction to the respondents to consider the appellants for appointment against the available vacancies by treating them eligible for such appointment depending upon their inter se merit vis-a-vis other candidates who may be competing for the unfilled vacancies if any out of those advertised, the respondents shall issue the appointment orders to them if they are otherwise found to be fit and suitable for such appointment. The needful shall be done by the respondents expeditiously but not later than two months from the date of this order.”

A look at the order passed by the Supreme Court as



above reflects the relief to the petitioners was moulded by the Supreme Court and a direction was issued to give them appointment against the available vacancies as on the day when the order was passed. Their merit was also to be assessed inter-se between the other candidates who may compete for the unfilled vacancies. Thus, those who were already appointed earlier, were left untouched. The petitioners were not given the benefit of their earlier placement in the select list and a fresh merit was to be prepared in relation to the unfilled vacancies. No notional benefits were granted by the Supreme Court.

4. In the circumstances, claiming relief beyond the orders passed by the Supreme Court, the present writ petition has been filed. In the opinion of this Court, such writ petition is not maintainable and is in fact an abuse of process of Court. If at all any grievance was left to be redressed, the only remedy for the petitioner was to approach the Supreme Court.

5. The reference to the subsequent order passed by a coordinate bench of this Court in relation to other candidates wherein relief was granted in addition to what was granted by the Supreme Court, has been made.

6. In the opinion of this Court, an order passed by the Supreme Court modifying the relief is under Article 142 of the



Constitution of India and this Court does not have powers to pass orders under Article 142. This Court also notices that the order passed by the coordinate bench dated 03.05.2018 fails to take notice of the order passed by the Supreme Court and in the opinion of this Court therefore the said order has to be treated as per incuriam and cannot be followed by this Court. Law in this regard is settled in judgment passed by the Apex Court in case of **Jagannath Temple Managing Committee vs. Siddha Math & ors. 2015(16) SCC 542** as under:

“Para 34: We agree with the contention advanced by the learned Senior Counsel appearing on behalf of the appellant Temple Committee. Most respectfully, we opine that the decision of this Court in Jagannath is per incuriam for non-consideration of the provisions of Sections 5 and 33 of the Temple Act, 1955 and the law laid down by this Court as regards between the two State enactments, which one will be the Special Act over other. While the doctrine of stare decisis is crucial to maintain judicial discipline, what cannot be lost sight of the fact is that decisions which are rendered in ignorance of existing statutes and law



laid down by this Court cannot bind subsequent Benches of this Court. In Moti Kureshi Jamat referred to supra, it was held as under:(SCC p. 589, para 112)

“112. The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.”

Para 35: *It becomes clear from a perusal of the case law adverted to by the learned Senior Counsel appearing on behalf of the appellant Temple Committee that a judgment can be said to be per incuriam when it is passed in forgetfulness or ignorance of a statute operating in that field. The Notification dated 18-3-1974 vested the estates of Lord Jagannath, Puri in the State Government in view of the amended provision of the proviso of Section 2(oo) of the OEA Act, 1951 inserted by way of an amendment in the year 1974. The judgment in*



Jagannath was passed only on consideration of the OEA Act, 1951. The provisions of the Temple Act, 1955, which is the principal Act that applies to the Lord Jagannath Temple, Puri were adverted to at all.”

And in the case of **Dr. Shah Faesal & ors. vs. UoI & Anr. 2020 (4) SCC 1** as under:

*“**Para 28:** The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd]. The aforesaid rule is well elucidated in Halsbury’s Laws of England in the following manner:*

“1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the



House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.”

Para 29: *In this context of the precedential value of a judgment rendered per incuriam, in the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak assumes great relevance : (SCC p. 716, para 183)*

“183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger bench can overrule such decision. When a previous decision is so overruled it does not happen – nor has the overruling Bench any jurisdiction so to do- that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word “decision” means only the reason for the previous



order and not the operative order in the previous decision, binding inter parties. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para105)

‘Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.’

And in subsequent judgments as in **Secretary to Govt. of Kerala, Irrigation Department & ors. vs. James Varghees & Ors.** as reported in **2022 (9) SCC 593**, and in **O.L. Vs Dayanand 2008 (4) SCC 1**, law relating to the question as to when a judgment shall be treated as per incuriam has been settled.

7. Keeping in view above, I am unable to follow the order passed by the coordinate bench. In light of the judgment passed by the Supreme Court which does not give any consequential benefit of seniority or appointment from an earlier



date. The writ petition is found to be wholly misconceived and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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