

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3421 of 2018

Satish Kumar son of Late Chandrika Prasad, Resident of Village- Hasanpura
East of Pain P.O.- Beur, Bhaya Anishabad, P.S.- Beur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director Primary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Patna.
4. The Collector-cum- District Magistrate, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer, Patna.
7. Smt. Pratibha Kumari, Assistant Teacher of Ram Narayan Middle School,
Rkabganj Malsalami Patna Cit
8. Arjun Prasad Yadav, Retired Headmaster of Middle School, Babuganj, Patna
City, Village- Daharpur, P

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16133 of 2018

Smt. Pratibha Kumari wife of Late Chandrika Prasad, resident of Village/
Mohalla- Lodikatra, P.O. Jhauganj, P.S. Khajekala, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director Secondary Education, Government of Bihar, Patna.
3. The Regional Deputy Director, Education, Patna.
4. The District Education Officer, Patna.
5. Keshav Prasad, S/o Name not known to the petitioner, the District Program
Officer Establishment, Patna.
6. Anand Kumar, S/o Name not known to the petitioner, the Clerk, District
Program Office Establishment Office, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3421 of 2018)

For the Petitioner/s : Mr. Alok Kumar, Adv.

For the State : Ms. Namrata Singh, AC to GA 12

(In Civil Writ Jurisdiction Case No. 16133 of 2018)

For the Petitioner/s : Mr. Abhishek Kumar, Adv.

For the Respondent/s : Mr. Madanjeet Kumar, GP 20

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



ORAL ORDER

8 24-01-2023 1. The petitioner has prayed as under:

“(i). For issuance of writ of certiorari for quashing/setting aside the order dated 7.2.2015, Issued vide memo no. 1154 passed by respondent no. 5 whereby and whereunder petition filed by petitioner has been rejected without hearing to the petitioner only on the basis of explanation filed by respondent no. 7.

(ii) For issuance of writ of certiorari for quashing/setting aside the cryptic order passed by respondent no. 3, Issued vide memo no. 1628 dated 27.12.2017. Whereby appeal filed by petitioner has been dismissed without hearing to the parties.

(iii) For the concern respondent be also directed as to see that the respondent no. 7 should honor the terms of Panchnama dated 17-6-1996 while getting appointment on compassionate ground and further to stick on the contents of the Affidavit (clouse-7)



sworn by her in the court of executive magistrate Nalanda dated 22.6.1996 and also, the petition filed by respondent no. 7 to district magistrate come establishment committee Patna on 25.9.1997.

(iv) For issuance of any other writ/writs, order/orders, direction/directions which the hon'ble court may deem fit and proper."

2. The dispute raised by the petitioner is essentially against the respondent no. 7 and respondent no. 8 claiming that the petitioner is son of Chandrika Prasad, who is stated to have married respondent no. 7 who was her second wife. The petitioner claims compassionate appointment after the death of Chandrika Prasad who was an assistant teacher in middle school at Patna City and further submits that there was a dispute between the petitioner and respondent no. 7 with regard to the right of seeking employment. The respondent no. 7 was ultimately offered appointment and she was appointed on compassionate grounds. It is further stated that the respondent no. 7 tried to disturb the position of the petitioner on the land



situated at Beur and has also not taken care of the dependents of the deceased Chandrika Prasad and thereby, flouted the condition of appointment. The petitioner has further stated that he filed a complaint to the District Magistrate and then also filed a writ petition before this Court bearing no. C.W.J.C. 22129/11 which was disposed of on 23.05.2017 holding that the disputed questions could not be gone into in refused jurisdiction. With observation to file appeal it was also observed that the periods spent in writ petition shall be excluded for considering limitation period. The petitioner has thereafter, filed appeal to the authorities which has not been heard for long till an order was passed on 06.12.2017. It is further stated that the respondent no. 7 is treating him step motherly and he is trying to dispossess him from the properties. The petitioner has his own family and two kids which are to be taken care of and therefore, has prayed that the respondent no. 7 is directed to honor the Panchnama on basis of which she was appointed on compassionate ground.

3. A completely civil dispute between the petitioner and



respondent no. 7 has been tried to be taken up in the present writ petition. Earlier too, this Court had rejected the contentions raised by petitioner holding that such disputes cannot be examined in writ jurisdiction. However, in the garb of the order dated 27.07.2017, the present writ petition has been again preferred by the petitioner. It appears that if some averments were made earlier before this Court with regard to some documents which resulted in this Court observing in **C.W.J.C. No. 3421 of 2018**, on 01.08.2019 as under:

“Counsel for the parties are directed to implead the Director Vigilance as party respondent in the present writ application.

Mr. Sanjay Prasad, learned counsel for the respondents accept notice on behalf of the Director Vigilance.

Put up this case on 13.09.2019 to enable the counsel for the Vigilance to file report after making enquiry into the matter of fraud practiced in the present case.”

4. Based on the said observations, a Vigilance Report has



been submitted by the Vigilance Department. Learned counsel appearing for the Vigilance Department submits that some documents filed in this Court are not original and forced. This court has is of a firm view that the writ proceedings cannot be completed to regular civil proceedings or criminal proceedings. This Court does not exercise original jurisdiction under Cr.P.C. or under C.P.C., while exercising powers under article 226 of the Constitution. The scope is limited, moreover documents filed before this Court in writ petition are not original documents but xerox copies alleged to be the copies of the original. Legality and veracity of such documents is open to question by way of filing a counter affidavit and if the doubt exists, on disputed questions the course open to this Court to dismiss the writ petition leaving it open for the contesting parties to prove their case in concerned Court. Writ petition and orders therein would not be exercised for creating new disputes between the parties. In the present case, the claim of the petitioner is essentially relating to his property dispute with his step-mother which has to be taken up in appropriate Civil Court.



Earlier too, this Court had made the similar observation but instead of going to any Civil Court appeal was filed before the authorities which was wholly ill-advised and misconceived. Filing of fresh writ petition before this Court is also found to be wholly misplaced. The writ petition is wholly frivolous, the same is dismissed with cost to be imposed on account of wasting precious time of the Court, sum of rupees twenty thousand is to be deposited with the Legal Services Authority.

5. Connected writ petition has been filed by the petitioner Pratibha Kumari, praying for quashing of letter dated 14th July 2018 issued by the respondent no. 5, District Programme Officer asking her to produce proof of her marriage with the deceased Government servant within three days and further withholding the salary by order dated 07.08.2018. After filing of the writ petition, the respondents have filed their counter and stated that the salary has been released by issuing order on 28.09.2018 subject to the decision before this Court. Having noticed the order dated 18.09.2018, it appears that the District Programme Officer (Establishment), Patna is entering into adjudication of



civil dispute between the petitioner and her estranged step-son which cannot be allowed. Government servants are not required to become adjudicators relating to civil disputes. Action of the respondent no. 5 in calling upon the petitioner to produce proof of marriage is found to be wholly beyond his powers and the same is quashed with further observation that the officers of the State Government ought to keep themselves away from civil litigation between the parties. Since the salary has been released, no further directions are required to be made in this writ petition.

6. The same has accordingly held to have become infructuous and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 48 &
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