

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.842 of 2023

In
Miscellaneous Jurisdiction Case No.2142 of 2022

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1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
 2. The Principal Secretary, Education Department, Government of Bihar, Patna.
 3. The Director, General Education cum Additional Secretary, Education Department, Bihar, Patna.
 4. The Director, Science and Technology Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Dugendra Kumar Jha Son of Late Suresh Jah, Resident of Village and P.O.-
Dhadhiya, P.S.- Kamtaul, District- Darbhanga-847304.

... .. Respondent/s

with
Letters Patent Appeal No. 820 of 2023
In
Civil Writ Jurisdiction Case No.1430 of 2021

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, General Education cum Additional Secretary, Education Department, Bihar, Patna.
4. The Director, Science and Technology Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Sanjay Kumar Giri Son of Bhagwat Giri, Resident of Village - Mumbarakpur, P.O. and P.S.- Marhaura, District - Saran (Chapra) - 841418.
2. Jay Kishore Singh, Son of Bhup Narayan Singh, Resident of Village- Bhawanpur, P.O. and P.S. - Adapur, District - East Champaran - 845301.
3. Durgendra Kumar Jha, Son of Late Suresh Jha, Resident of Village and P.O.- Dhadhiya, P.S. - Kamtaul, District - Darbhanga - 847304.
4. Ramesh Kumar, Son of Late Jagannath Prasad, Resident of Village- Dumra, P.O. - Jautiya, P.S.- Chanpatiya, District - West Champaran (Bettiah) -



845449.

5. Imran Alam, Son of Late Md. Kashim Resident of village - Pakahi, P.O. - Andhra, P.S. - Adapur, District - East Champaran (Motihari)- 845433.
6. Md. Sarfe Alam, son of Late Lal Mohammad, Resident of Village Brahmpurra (KumharToli), P.O. - M.I.T., P.S. - Brahmpura, District - Muzaffarpur - 842003.
7. Bangur Yadav, Son of Late Shivmangal Yadav, Resident of Village and P.O. - Gudra, P.S. - Manjhaulia, District - West Champaran 845454.
8. Mahesh Kumar Yadav, Son of Late Madhukar Yadav, Resident of Village - Pokhar Shaam, P.O. - Salempur, P.S. - Pandol, District - Madhubani - 847234.
9. Haihar Yadav, Son of Shiv Vachan Yadav, Resident of Village and P.O.- Manikpur, P.S. and District- Gopalganj - 841428.
10. Ramjeet Chaudhary, Son of Rekha Chaudhary, Resident of Village and P.O. - Manikpur, P.S. and District - Gopalganj - 841428.
11. Yadulal Yadav, Son of Late Shri Ram Anuj Rai, Resident of Village - NayaganwJamanipur, P.O. and P.S. - Maner, District - Patna - 801108.
12. Shankar Prasad Gupta, Son of Virendra Prasad Gupta, Resident of Village - Brahmpura, Lakshmi Chowk, P.O. - M.I.T. P.S.- Brahmpura, District- Muzaffarpur - 842003.
13. ArvindKishroe Prasad Son of ShriRaghavSharan Prasad, Resident of village and P.O.- Ramchandrapur, P.S. - Thawe, District- Gopalganj - 841440.
14. Nand Kishore Bhagat, Son of BaijuLal Bhagat, Resident of Village- Brahmpura (AwadhBihari Lane), P.O. - M.I.T. P.S. - Brahmpura, District - Muzaffarpu - 842003.
15. Md. SohailAlam, Son of Md. Aslam Resident of Village - BrahmapurDaudbpurKothi, P.O. - M.I.T., P.S. - Brahmpura, District - Muzaffarpur - 842003.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 842 of 2023)

For the Appellant/s	:	Mr. P .K. Shahi, AG Mrs. Binita Singh, SC-28 Mr. Vivek Anand Amritesh, AC to SC-28
For the Respondent/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mr. Riya Giri, Advocate Mr. Binutosh Kumar, Advocate

(In Letters Patent Appeal No. 820 of 2023)

For the Appellant/s	:	Mr. P. K. Shahi, AG Mrs. Binita Singh, SC-28 Mr. Vivek Anand Amritesh, AC to SC-28
For the Respondent/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mr. Riya Giri, Advocate Mr. Binutosh Kumar, Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 11-08-2023

We are concerned with two appeals, one arising from the order passed in the writ petition and other from an order passed in the contempt case. Obviously, the order passed in the contempt case would depend upon the manner in which the appeal from the order in the writ petition is disposed of.

2. We heard Sri P. K. Shahi, learned Advocate General for the State of Bihar, the appellant in both the appeals and Sri Ashish Giri, the learned counsel for the respondents, who are the petitioners before the learned Single Judge.

3. Learned Advocate General submits that the learned Single Judge had exceeded his jurisdiction in directing recruitment within a time frame, by the impugned order, which was impossible of compliance especially considering the massive exercise it entails. The selection is not to be confined to the respondents herein and has to be from the open market also, with only benefit of age relaxation, conferred in tandem with the period of service of the respondents. It is also urged that the petitioners have absolutely no valid claim for consideration and in that circumstance, they cannot even claim an expeditious



recruitment. They are bound to be disqualified for the age relaxation not inuring to their benefit since they are far above the maximum age prescribed. The relaxation is only for 3 years, the period for which they were in service, and all the respondents are past 50 years of age. There is not even one person who is qualified to participate in the selection. It is urged that in the contempt case also, the learned Single judge refused to give an extension and even imposed costs peremptorily subject to the recruitment being not carried out as directed in that order.

4. Sri Ashish Giri, learned counsel for the respondents, however, vehemently argued that the writ petitioners are persons, who were fighting for their cause from 2000 onwards. The benefit of the order passed in the year 2001 has not been conferred to them till date. It is pointed out that other similarly situated persons have been taken into service either by way of regularization or recruitment, with relaxation granted for participation in the selection. It is further argued that the cause of action arose only in the year 2021 when similarly situated persons were directed to be regularized in the Department. The learned counsel specifically points out that the only grievance in the appeal is the limited time granted for



completing the recruitment and the respondents do not object to the same being extended. The rights accrued to them by the earlier order in 2001, which was sought to be enforced by the writ petition in 2021, cannot be taken away from the writ petitioners, who are respondents in the appeal.

5. We have to notice the background facts and the parallel sought to be drawn with a litigation which had a checkered career; which is lacking in the case of the respondents herein. The batch of writ petitions filed by the respondents herein, along with similarly situated persons were disposed of in 2001. The petitioners at that point of time were persons appointed on contract basis in Class II Teaching posts, Class III Technical and Non-technical posts and Class IV, in the different Polytechnic Centers. Their appointment was also pursuant to a program funded by the World Bank which was initiated in the year 1991. It was during the project period that the posts were sanctioned temporarily and the respondents along with others were appointed, clearly on contractual basis. The contractual appointments were made specifically noticing the heavy burden on the State exchequer; to avoid which, the State took a decision before-hand to make temporary appointments without filling up the posts with regular appointments. The State Government was



also conscious of the fact that after the project period ended, there could be deputation drawn from other Departments or even, the contractual appointments continued. There was some development achieved during the project period, but it left a lot to be desired, especially in the area of teaching. The project came to an end and so did the financial aid, which required the Government to maintain with its own resources, the development achieved during the project period.

6. The selections, on contract basis, were made through advertisements but, it was later realized that there was imbalance created by disproportionate appointments in Class III and IV posts, while the teaching posts got fewer appointments. The project came to an end on 28.02.1999 and the Government was of the opinion that the contractual appointees cannot be retained, which decision in fact had been taken even before the appointments were mooted by the Government. In fact, it was specifically observed by the Court in its order dated 7/8.04.2001, that, at no point of time the contractual employees had any hope of getting regularized in their posts considering the very nature of their appointments which were expressly stated to be temporary and contractual. This position was admitted by the various counsel appearing for the petitioners at



that point and none had seriously challenged the termination orders.

7. The limited submission in the year 2001 was that, to sustain the little development achieved, the Government would necessarily have to employ personnel and the petitioners be continued till such time as replacements are made. The Court while disposing of the batch of writ petitions observed in an interim order that the question of replacement and continuance would arise, only if fresh recruitments are to be made and not when transfers are to be made from other Polytechnic institutions; which according to the State was their intention, especially considering the minimum requirement that would be needed to sustain the development achieved through the project. The Court specifically noticed an earlier order passed on 28.02.2001 which specified that no recruitment shall be made to the post of Lecturer in the Government Polytechnics presently held by the petitioners. The State requested for a consideration of filling up of necessary posts on transfer on a minimum need basis and undertook the restoration of all the courses, that existed at the time of termination of the petitioners, within one month. An affidavit was also filed with the above undertaking, but noticing that no specific date was mentioned, the matter was



posted on 17.05.2001, so that the State Government could apprise the Court as to the undertaking given by the State having materialized. This much is evident from the order of the learned Single Judge dated 07/08.04.2001. We have to also notice that the concern of the Court was the sustenance of the development achieved with the World Bank Project and maintenance of the teaching standards in the Polytechnics within the State. The petitioners were held to have no right to be continued.

8. The matter stood finally disposed of by order dated 26.06.2001 in the batch of writ petitions. It was noticed that there was no challenge to the orders of termination; which was clearly understood by all the petitioners, to be temporary and contractual. A counter affidavit dated 22.06.2001 filed by the Science and Technology Department after discussions at the administrative level, was specifically referred to. It had been decided to transfer surplus staff from one place to another, thus, ensuring placement of teachers in available vacancies in the various Polytechnics so as to ensure that the situation is better than that existing with contractual appointments. The learned Single Judge, who disposed of the petitions specifically noticed that there was no fault of the Government in making such



transfers, especially to ensure that the teaching posts in the Polytechnics do not suffer by termination of the contractual appointees. Finding the action of the Government to be proper, the petitioner's prayers were rejected but, however, it was also observed that in future when the Government makes appointments to the Polytechnics, the petitioners would be surely entitled to relaxation in age to the extent of their service period and for some reasonable weightage for their past satisfactory service. It is this observation that is sought to be enforced after more than two decades.

9. An appeal was filed which was dismissed by a Division Bench by order dated 28.11.2001, and it was categorically found that the appellants had no right to continue and their termination from contractual appointments, on the project period expiring, could not be faulted. It was also found that the apprehension expressed of maintaining the educational standards in Polytechnics by transfer from other polytechnic institutions, as proposed by the Government was misplaced, since it perfectly took care of the situation. The direction of the learned Single Judge to consider the terminated contractual employees for appointments with due weightage and reckoning their period of service was reiterated by the Division Bench. The



orders referred to; both of the learned Single Judge and Division Bench are of the year 2001. The matter ended there and admittedly, there was no claim set up by any of these petitioners after the said orders till 2021, when the instant writ petition was filed.

10. The present writ petition numbered as C.W.J.C. No. 1430 of 2021 was filed, after twenty years taking umbrage at the appointments made in the Science and Technology Department. The alleged cause of action is the letter dated 25.02.2020 produced as Annexure-5 to the writ petition. The petitioners alleged that by the aforesaid letter, 23 candidates were to be appointed against vacant Class IV posts in the Science and Technology Department, which appointments were also made, ignoring the claims of the petitioners in the instant writ petition. The petitioners, hence, made a representation to the Director, General Education-cum-Additional Secretary as well as the Science and Technology Department for considering their recruitment on the basis of the observations made in the 2001 judgment. It was alleged that the appointments now made, were contrary to the directions in the 2001 judgment and violative of Articles 14 and 16 of the Constitution of India. The latter contention was pressed on the premise that there was no



public advertisement issued before proceeding to fill up the said Class IV posts and if that was taken out, the writ petitioners would have had the benefit of the observation in the 2001 judgment.

11. In the writ petition, various orders were passed directing the respondent to file affidavits and by order dated 03.01.2022, the petitioners' appointment in 1997 and on contractual basis was noticed along with the promulgation of the Bihar Group D (Recruitment and Service Conditions) Rules, 2010. Finding that without proceeding for a recruitment as per the Rules of 2010, 23 appointments were made and 365 posts were left vacant, the learned Single Judge directed filing of an affidavit as to the procedure that would be adopted for filling up the remaining vacancies. The said order dated 03.01.2022 is extracted in the impugned judgment. Again, on 13.01.2022 on the submission of the learned counsel for the petitioners that there is no full compliance of the order dated 13.01.2022, the Director, Science and Technology Department was asked to be present before Court on the next date of hearing. On 31.01.2022, noticing the supplementary counter affidavit filed by the Director, Science and Technology Department, the writ petition was disposed of by the impugned judgment.



12. The extract of the supplementary counter affidavit made in the impugned judgment indicates that the Department of Science and Technology was ready to proceed with the existing rules for recruitment of the remaining Class IV posts. However, difficulties were expressed in carrying out immediate selection, especially since the Department was in the process of complying with the orders and directions passed by the Hon'ble Supreme Court in S.L.A. (C) No. 32079/2015, affirming the directions of the Hon'ble High Court in L.P.A. No. 1489/2011 and Civil Review No. 344/2016. In compliance with the aforesaid orders, the Department had reported the vacancies available in Group D to the Education Department, and till date 270 candidates among the retrenched non-formal education instructors belonging to Non-Formal Education Programme, were recommended for adjustment in vacancies in Class IV. One hundred and eighty seven candidates had been appointed and the remaining 83 were pending verification of documents. These 83 persons also were to be adjusted in the remaining 365 vacancies. It was also pointed out that there would be more requests made by the Government for adjustment of retrenched non-formal educational instructors, which also would have to be carried out. The further difficulty urged was in the qualification



for Group D posts which would attract scores of applications. The minimum qualification for Group D posts was matriculation and there would be a large number of candidates, possibly in lakhs applying for the posts which would make the task very difficult and impossible of compliance within a definite time frame. For the development of a robust I.T cell to carry out recruitment, 6 month time was requested. The learned Single Judge, however, understood the said affidavit as the recruitment being notified within 6 month time; which according to the learned Single Judge was the submission made by the Director, Science and Technology Department, who was present in person. The impugned judgment was passed directing selection and appointment in the 282 vacancies of Class IV posts, within a period of 8 months. The impugned judgment was dated 31.01.2022 and a Miscellaneous Jurisdiction Case was filed alleging contempt by M.J.C. No. 2241/2022. It was alleged that the order dated 31.01.2022 has not been complied with and again the Director, Science and Technology Department was summoned, who undertook to complete the process pursuant to the advertisement dated 22.09.2022 within a period of 2 months. A peremptory order was made that if such process of selection is not completed within a period of 2 months, a cost of Rs. 1 lakh



would be paid to the High Court Legal Services Committee.

13. In the context of the above directions issued, we have to notice another set of litigation which arose prior to and was continued long after the judgment of 2001; the observations in which is relied on by the petitioners in the writ petition from which the instant appeal arises. The two separate sets of writ petitions, though sought regularization, arose out of distinct facts and circumstances. The learned counsel for the respondents placed heavy reliance on the regularization of certain people, while allegedly similarly placed respondents were denied of the same. Reliance was also placed on yet another Division Bench decision in L.P.A. No. 214 of 2022.

14. We cannot but notice that the other issue of regularization arose with respect to a totally different scheme. The present appointments made by the Science and Technology Department, the cause of action claimed by the writ petitioners in 2021, were according to the recommendation made by the Education Department, of non-formal educational instructors appointed in the latter department and retrenched. The writ petition from which the L.P.A. arose was an off-shoot of another writ petition numbered as C.W.J.C. No. 8418 of 2010, which was decided on 21.04.2011. The petitioners therein were



persons appointed as Instructors in a Scheme originally formulated by the Central Government in 1981-82 known as Non-Formal Education Programme, to impart non-formal education to children of age, ranging from 6 to 14 years; later continued by the State Government under its Department of Adult and Non-Formal Education, from 1984 till 2001. The question arose whether there could be any distinction to non-formal educational supervisors and non-formal educational instructors, as a consequence of the closure of the scheme in the State and the non-formal supervisors being rehabilitated pursuant to a government decision dated 12.01.2010. Though the instructors and supervisors were found to be two separate categories, the former appointed to impart teaching and the latter to supervise the running of the non-formal centers; if one category was found entitled to regularization, the other category also should be given the same benefit, was the finding. The policy to regularize supervisors was held to be applicable to the instructors, *mutatis mutandis* subject only to the condition that they should have been working for 3 years continuously at the time when the non-formal education scheme was abolished. In fact, the prayer before the Court was that instructors were ready to even occupy Class IV posts though, as instructors they would



have been holding posts equivalent to Class III. The decision of the learned Single Judge was approved in Annexure-B judgment of the Division Bench in L.P.A 1489 of 2011, and similar cases which is produced in the counter affidavit to the writ petition. The S.L.P. filed against the judgment, by the State was dismissed on 26.02.2016 (S.L.A. (C) No: 32079/15); but restraining the benefit to those persons who were before the Supreme Court & the High Court, as on that date; i.e., 26.02.2016. Obviously, the respondents herein were neither before the Supreme Court or the High Court on 26.02.2016; their claims having been rejected in 2001.

15. A review was filed from the aforesaid judgment dated 11.08.2015, which was disposed of finding that even those persons who were not before Court, but identically situated should be extended the benefit. Civil Appeal No. 7353 of 2021 against the order in review was disposed of by order dated 02.12.2021. It was noticed that a scheme was introduced by the Central Government for imparting elementary education to the students in furtherance of which centers for non-formal education were established with instructors and supervisors appointed on contractual basis. The scheme was closed in the year 2001 and there were litigations filed by the various



retrenched employees. Eventually, the government decided to absorb the supervisors but not the instructors. The judgment dated 11.08.2015 of the Division Bench in L.P.A. No. 14731 of 2008 was challenged before the Hon'ble Supreme Court. While approving the order impugned and dismissing the SLP, it was made clear that the relief granted would be restricted to those who approached the High Court and whose applications were pending at that point of time. In the appeal from the order in review, it was categorically held that the order of the Hon'ble Supreme Court dated 26.02.2016 cannot be deviated from by the High Court and the general principles relied on by the High Court in disposing of the review petitions were found to be bad and in the teeth of the clear terms of the order dated 26.02.2016. We extract the following paragraphs from the order dated 02.12.2021 in Civil Appeal No. 7351 of 2021 :-

While it may be true that, generally, similarly situated persons, irrespective of whether they move the Court or not, must be similarly treated, this principle cannot be applied when this Court has spoken and pronounced the order in terms as order dated 26.02.2016. Equally unsustainable is the finding that those who are waiting in the wings cannot be denied the relief which is granted by the Court unless the relief is personal to the person.

Reference similarly to the provision of clause 4(c) of the Bihar State Litigation Policy was, in our view, a product of error following non-advertence to the terms of the order dated 26.02.2016. The final observation in paragraph A that if the petitioners are



similarly circumstanced to other persons, they would be similarly treated, does not involve a clear finding as to whether these persons were within the ambit of the order dated 26.02.2016. It was incumbent upon the High Court to have decided the case, in other words, with specific reference to what has been stipulated by this Court by its order dated 26.02.2016. We reiterate the said principle.

Shri Amit Pawan points out that following the order of the High Court, respondent Nos. 1 and 2 were appointed and subsequently, their services have been terminated. It is, however, pointed out that they have filed petitions before the High Court which are pending consideration.

In the light of this, the course that this Court must adopt is, since the matter is a live issue, even from the point of view of the averments seeking modification, the matter must receive the attention of the High Court in the light of the order passed by this Court on 26.02.2016.

As noted already, certain petitions at the hands of Unions have attained finality cannot be reopened. At the same time, if there are persons who fall within the four walls of the order dated 26.02.2016, they may be entitled to relief as envisaged. Accordingly, we allow the appeals and set aside the impugned order. The matter will be considered by the High Court in the light of our observations and with specific reference to the order dated 26.02.2016. We make it clear that the matters which have become final cannot be reopened.

16. Hence, the specific direction was to consider recruitment or regularization on the basis of the order dated 26.02.2016 of the Hon'ble Supreme Court. The writ petitioners therein were appointed under a totally different scheme and their rights stood crystallized by the judgment of the Hon'ble Supreme Court dated 26.02.2016. Neither the respondents in the



present appeal nor the Science and Technology department were parties; either before the Hon'ble Supreme Court or before the Hon'ble High Court in those litigations. The writ petitioners in the instant appeal are persons whose writ petitions and the appeals therefrom stood disposed of in the year 2001 and there were no further proceedings taken. They are not identically situated to the persons now sought to be appointed in the various departments of the State in Class IV posts, including the Science and Technology Department; by any stretch of imagination.

17. The writ petitioners here, were persons contractually appointed to posts identical to Group IV posts in the Science and Technology Department and continued only for 3 years under a World Bank Project as distinguished from a Central Government Project continued by the State Government. The issue dealt with by the Division Bench in L.P.A. No. 214 of 2022 also was identical to that of the respondents herein. In fact, in L.P.A. No. 214 of 2022, it has been noticed that the instructors similarly situated, were the petitioners in C.W.J.C. No. 1430/2021 and the Department is fixated today on regularizing the said persons; which, however, we notice was on the basis of the order passed in C.W.J.C. No.



1430 of 2021, against which the present appeal is filed. It was also noticed by the Division Bench that the petitioners in C.W.J.C. 1430 of 2021 were persons who had approached the High Court and the Supreme Court, before the order dated 31.01.2022 was passed, which, with due respect is factually, incorrect. The writ petitioners/respondents in the appeal herein had never approached the Hon'ble Supreme Court and their litigation stood concluded by the judgment in L.P.A Nos. 644 of 2016 and connected matters, by judgment dated 28.11.2001. They were not persons whose petitions were allowed or pending as on 26.02.2016 when the order in S.L.P. No. 32079 of 2015 was passed in the case of the Non-Formal Instructors who were appointed and continued under a totally different scheme.

18. We also have to notice another contention raised by the learned Advocate General on behalf of the Science and Technology Department. The advertisement as issued for recruitment in the Group D posts, as of now, gives age relaxation to the extent of the period spent in employment, which even according to the petitioners, is only 3 years. The age relaxation granted which is evident from Annexure-1 series is of 3 years, which would be applicable to the various upper age limit provided in paragraph 4 (ii) which are 37, 40 and 42.



Hence, even if the upper age limit is applied, none of these persons who have crossed 50 years would be eligible. Some of the petitioners who had applied had asserted that they were 'ex-service men' and claimed relaxation from the 53 years maximum limit provided to 'ex-service men'. We cannot, but notice that the said assertion is fallacious insofar, as none of the petitioners, who claimed so, have any service in the defense service of the Union of India, who alone are entitled to the relaxation as available to 'ex-service men'. The mere fact that they were employed on contractual basis in the Science and Technology Department would not make them 'ex-service men' as indicated in the notification.

19. We cannot, but notice that the writ petitioners/respondents and similarly situated persons were found to have absolutely no right for regularization, as far back as in 2001. The respondents were only persons who were appointed to contractual posts, which were declared to be temporary in nature and in pursuance of a project implementation. The services stood terminated on the completion of the project and the writ petitions filed seeking regularization were dismissed in the year 2001 and so were the appeals filed. The action of the State Government in providing



for deputation and transfers for the purpose of ensuring and maintaining the teaching standards achieved through the implementation of the project was also upheld by this Court. It was only by way of an indulgence that the petitioners were conferred the benefit of being considered for recruitment to identical posts in the Science and Technology Department, as and when it takes place. The observation made in 2001 cannot be claimed as a benefit in the year 2021 after almost 20 years, that too on the basis of appointments made pursuant to the directions of a Division Bench of this Court, approved by the Hon'ble Supreme Court, in a totally distinct batch of writ petitions; which benefit was also directed to be confined to those persons who were before the High Court as on 02.06.2016 when the S.L.As were disposed of. There is no parallel between the case of the respondents and of the persons, who were directed to be considered by the Hon'ble Supreme Court. We find no cause of action for the writ petitioners/respondents in the appeal.

20. The learned counsel for the petitioners had submitted that the appeal is filed only seeking further time to bring out the advertisement. However we have found the writ petitioners to have no cause of action and in that circumstance



no claim can be raised for expeditious recruitment. The advertisement has been made and we are of the opinion that it was not proper for the learned Single Judge to have specified a time frame within which the selection should be completed, especially looking at the problems put forth in the counter affidavit filed. Again, after the contempt was filed, an advertisement was brought out. There could not have been, any further directions issued in the contempt case, which has been issued and an anticipated cost mulcted on the Department, if the orders are not complied with. It is trite that in contempt matters, if there is deliberate contempt found, the contemnors could be proceeded with and punished but, as far as possible, there could be no further directions issued.

21. In *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda*, (2006) 5 SCC 399 : at page 410, after looking at a catena of decisions it was held thus:

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a



proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of “jurisdiction to punish for contempt” and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

[underlining by us for emphasis]

22. Hence, an order of punishment is appealable under Section 19 of the Contempt of Courts Act and any directions issued or decision on merits can be challenged in an intra-court appeal. It has also been held that it would be inappropriate for the Court to decide or adjudicate any issue on merits; in a contempt of Court case.

23. We set aside the order passed by the learned Single Judge in C.W.J.C. No. 1430 of 2021 and also find the interim orders extracted in the order to be of no consequence. The writ petition would stand dismissed as the petitioners have no cause of action on the basis of Annexure-5, letter dated 25.02.2020. The directions passed in the contempt case and the peremptory order of cost, in anticipation of a probable non-



compliance, also would stand set aside. As far as the eligibility of the petitioners insofar as the advertisement is concerned they could claim it, if they come within the relaxation as provided in the advertisement subject to our findings above. The recruitment as advertised cannot be directed to be completed within a particular time frame.

24. We allow both the appeals and as a consequence dismiss the writ petitions and reject the contempt of court case.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
CAV DATE	03.08.2023
Uploading Date	11.08.2023
Transmission Date	

