

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 4944 of 2018

In

Civil Writ Jurisdiction Case No. 11166 of 2009

Naresh Kumar Mahto Son of Shri Laddu Lal Mahto Resident of Village-
Jawaharpur, Post Office- Koneaila, Police Station- Ujiyarpur, District-
Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. The Commissioner cum Secretary, Human Resources Development
Department, Bihar, Patna.
3. The District Teacher Appointment Appellant Authority through the District
Magistrate, Samastipur.
4. The District Magistrate, Samastipur.
5. The District Education Officer, Samastipur.
6. The District Superintendent of Education, Samastipur.
7. The Block Development Officer, Ujiyarpur Block, Samastipur.
8. The Block Education Extension Officer, Ujiyarpur Block, Samastipur.
9. The Mukhiya, Gavpur Gram Panchayat, Ujiyarpur, Samastipur.
10. The Panchayat Shikshak Niyojan Samiti, Gavpur Gram Panchayat, through
the Gram Panchayat Sachiv, Gavpur Gram Panchayat, Ujiyarpur,
Samastipur.
11. The Gram Panchayat Sachiv, Gavpur, Ujiyarpur, Samastipur.
12. The Principal, Rajkiya Prathamik Vidyalaya, Deeh, Gavpur, Ujiyarpur
Block, Samastipur.
13. Shree Dharmendra Kumar Paswan Son of Shree Ram Sagar Paswan
Resident of Village- Gavpur, Police Station- Ujiyarpur, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Adv.

For the Opposite Party/s : Mr. Prabhat Ranjan Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT



Date: 25-01-2024

The present petition has been filed for restoration of a writ petition bearing CWJC No. 11166 of 2009, which has stood dismissed on 4.11.2009, on account of non-compliance of the peremptory order dated 28.10.2009, qua the Respondents No. 9, 11 and 13.

2. The present case has a chequered history, inasmuch as the aforesaid writ petition bearing CWJC No. 11166 of 2009 was filed on 28.8.2009, whereafter, the same was listed before the Court on 28.10.2009 and a coordinate Bench of this Court, vide order dated 28.10.2009, had directed for issuance of notice to the Respondents No. 9, 11 and 13, for which requisites under registered cover with A/D as well as under ordinary process were directed to be filed within one week, failing which it was stipulated that the writ petition would stand rejected against the aforesaid Respondents without further reference to the Bench.

3. The aforesaid order dated 28.10.2009, passed in the aforesaid writ petition, was not complied with by the petitioner within the peremptory time granted by this Court, hence, the writ petition had stood rejected as against the Respondents No. 9, 11 and 13 on 4.11.2009. Thereafter, the aforesaid writ petition was again listed before the Court on 10.08.2018 and four weeks'



time was granted to the petitioner to take steps for restoration of the writ application, which had stood dismissed qua the Respondents No. 9, 11 and 13, due to non-compliance of the peremptory order. The matter was again listed before a coordinate Bench of this Court on 9.10.2018 and considering the reluctance of the petitioner in carrying out the earlier orders, passed in the aforesaid writ petition, the writ petition was dismissed as incompetent.

4. The petitioner had then filed a petition bearing MJC No. 5020 of 2018 for recall of the order dated 9.10.2018, passed in CWJC No. 11161 of 2009, whereby and whereunder the writ petition had been dismissed as incompetent, inter alia, stating therein that the petitioner has already filed a restoration petition, i.e. the present one, on 7.12.2018. In such view of the matter, the aforesaid writ petition was directed to be restored to its original file, vide order dated 02.01.2019, passed in MJC No. 5020 of 2018.

5. Now, this Court is required to consider the present restoration petition, which though has been occasioned on account of rejection of the aforesaid writ petition on 4.11.2009 due to non-compliance of the peremptory order dt. 28.10.2009 but has been filed after a delay of more than nine years.



6. The learned counsel for the petitioner has submitted that there is no delay in filing the present petition, inasmuch as the present petition has been filed in pursuance to the time granted to the petitioner, by a coordinate Bench of this Court vide order dated 10.8.2018, passed in the aforesaid writ petition, for taking steps for restoration of the said writ petition, which had stood dismissed qua the Respondents No. 9, 11 and 13 on account of non-compliance of the peremptory order dated 28.10.2009. It is further submitted that the peremptory order of this Court dated 28.10.2009 could not be complied with in time on account of wrong computation of the days by the advocate clerk, hence there was no intentional laches on the part of the petitioner, rather default had taken place on account of the bonafide mistake of the counsel for the petitioner as well as his clerk, thus, the aforesaid writ petition be restored.

7. I have heard the Ld. Counsel for the petitioner and perused the records, from which it is apparent that the aforesaid writ petition has already stood restored to its original file, by an order dated 02.01.2019, passed in MJC No. 5020 of 2018, which is reproduced herein below:-

“Office objection stands overruled.

For the reasons stated in para-10 of the petition, the present application is allowed. CWJC No. 11166 of



2009 is directed to be restored to its original file.

The restoration application stands allowed and disposed of.”

The aforesaid fact, i.e regarding the writ petition in question having already stood restored, has also been pointed out by the office of this Court.

8. This Court finds from the records that the present Counsel for the petitioner, who has filed the instant restoration petition and is also appearing for the petitioner, has though filed a Vakalatnama on behalf of the petitioner, but without the petitioner seeking ‘no objection’, from the Ld. Counsel appearing in the aforesaid writ petition and moreover, in the aforesaid writ petition, the present counsel has not filed any Vakalatnama on behalf of the petitioner, after seeking no objection from the earlier counsel, which raises a question mark regarding such conduct.

9. On the contrary the Ld. Counsel for the petitioner, had though filed and argued the aforesaid petition bearing M.J.C. No. 5020 of 2018, leading to passing of an Order dated 02.01.2019, by which the aforesaid writ petition has already stood restored to its original file, but he appears to be oblivious about the same and has instead created a ruckus and continued



squabbling by submitting that since a coordinate Bench of this Court, vide order dated 10.8.2018, has granted time to the petitioner to take steps for restoration of the writ application, the present restoration petition has been filed, hence, the same has to be allowed. Such conduct of the present counsel for the petitioner is regrettable and is deprecated.

10. Now, coming back to the present case, this Court finds that since the aforesaid writ petition bearing CWJC No. 11166 of 2009 has already stood restored by an order dated 02.01.2019, passed in MJC No. 5020 of 2018, the present petition has been rendered infructuous, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.1.2024
Transmission Date	NA

