

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.589 of 2019

In
Civil Writ Jurisdiction Case No.12149 of 2010

=====

Rakesh Kumar Singh Son of Vishwanath Prasad Singh Resident of Indra Nagar Road No. 9, Near Mithapur Bus Stand, Postal Park, P.S.- Jakkanpur, District- Patna- 800001.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. The Secretary Department of Home (Special), Bihar, Patna.
3. The Additional Secretary Home- Cum- Inspector General (Prison), Bihar, Patna.
4. The Additional Secretary Department of Home (Special), Bihar, Patna.
5. Sunil Kumar 'Maurya' Son of Late Nathuni Prasad Resident of Village- Akauna, P.O.- Sherghati, P.S.-Amas, District- Gaya.
6. Satish Kumar Singh Son of Sri Bhubneshwar Singh Resident of Village- Hathsarganj, Hajipur, P.S.- Town, District- Vaishali.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Kumar Kaushik, Advocate
For the Respondent/s : Mr.Prabhat Kumar Verma (AAG 3)

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 30-04-2024 The present L.P.A. is filed in the year 2019 insofar as assailing the order of learned Single Judge dated 13.10.2017 passed in C.W.J.C. No. 12149 of 2010. There is delay of about One year and 179 days.

2. Heard I.A. No. 01 of 2019.

3. For the reasons stated in the application and affidavit, it is condonable for the reasons that appellant Rakesh



Kumar Singh was not arrayed as a party in C.W.J.C. No. 12149 of 2010 filed by Sunil Kumar.

4. Be that as it may, the present M.J.C. is not maintainable in view of the fact that the appellant was not party to the C.W.J.C. No. 12149 of 2010. In this regard, petitioner has other alternative remedy like filing Civil Review petition against Order dated 13.10.2017 passed in C.W.J.C. No. 12149 of 2010 or in the alternative in filing fresh C.W.J.C. under Article 226 of the Constitution in light of the principle laid down by the Hon'ble Supreme Court in the case of ***Shivdeo Singh and Ors. Vs. State of Punjab and Ors.*** reported in ***AIR 1963 SC 1909*** and it is necessary to reproduce paragraph-8 of the said Judgment and it reads as under:

“8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct



grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.”

5. Similarly, Hon’ble Supreme Court has reiterated the principle in the case of ***Rama Rao and Ors. Vs. M.G. Maheshwara Rao and Ors.*** reported in ***2007 14 SCC 54***. The relevant paragraph 8 reads as under :-

8. This contention raised was met by the High Court by pointing out that even though the assistants belong to a different cadre, since there was a confluence of the two streams leading to the promotional posts, the assistants had locus standi to file an application under Section 19 of the Act in which,



to ventilate their grievances they could canvass the correctness of the decision earlier rendered on 6-7-1994 by the Administrative Tribunal. The High Court referred to the decision in K. Ajit Babu v. Union of India [(1997) 6 SCC 473 : 1997 SCC (L&S) 1520 : 1997 Supp (3) SCR 56] to find that the proper procedure to be adopted by persons situated like the assistants in this case and who were not made parties to a prior decision which had effect on their career, was to move an application under Section 19 of the Act. In that decision, this Court noticed that even though the judgment of an Administrative Tribunal may only be a judgment in personam, occasionally, it could also operate as a judgment in rem and those affected by it had the right to approach the Tribunal again with an application under Section 19 of the Act when they are affected as a consequence of the earlier decision and are entitled to seek reconsideration of the view taken in the earlier decision. The High Court, following it, held that the assistants had the locus standi to move the application under Section 19 of the Act before the Tribunal and seek reconsideration of the earlier decision passed by it without notice to them and to show that the said order required reconsideration or that it was not a legal or a proper one. We see no reason not to accept



the reasoning adopted by the High Court. After all, the assistants who were not impleaded in the earlier proceeding must have an avenue to ventilate their grievances. This Court has indicated that that avenue is an approach to the Tribunal and that was in a case in which the very same Act was involved. This Court had also pointed out what the Administrative Tribunal could do in such a situation. If this were not the position, the assistants would be able to say that since they were not parties to the earlier proceedings, they were not bound by it and they are entitled to ignore the decision therein and that the said decision cannot affect them since it would be a decision that is void in law for non-compliance with the rules of natural justice. There is, therefore, no grace in the submissions that the assistants could not have approached the Administrative Tribunal with their grievance and the Tribunal could not have considered their grievance or gone back on its earlier decision. We are in agreement with the approach made by the High Court and the conclusion arrived at by it and hence have no hesitation in overruling this contention. The argument that the jurisdiction of the High Court came to be recognised only later, cannot change the situation, since when the High Court entertained the writ petition it had



the jurisdiction to do so and it had jurisdiction also to consider what was the effect of the earlier order or the proceeding before it and whether the earlier order was legal and justified in the context of the decision of this Court in Ajit Babu case [(1997) 6 SCC 473 : 1997 SCC (L&S) 1520 : 1997 Supp (3) SCR 56].”

6. Accordingly, the present L.P.A. is not maintainable.

Hence, L.P.A. No. 589 of 2019 stands disposed of as not maintainable, reserving liberty to the petitioner to avail the aforementioned remedy in accordance with law.

7. The appellant has approached this Court in filing L.P.A. on account of implementation of order dated 13.10.2017 passed in C.W.J.C. No. 12149 of 2010 to the extent that his ranking in seniority list of Assistant Jailer has been altered and notified on 02.09.2019. He is at liberty to question the same in the manner known to the law.

8. Pending I.A.'s, if any, stands disposed of.

9. At this stage, the learned counsel for the petitioner submitted that delay would be a hurdle insofar as filing Civil Review or C.W.J.C. before the learned Single Judge. In this regard, learned Single Judge is requested to take note of recent decision of Hon'ble Supreme Court in the case **North Eastern**



*Chemicals Industries (P) Ltd. and Anr. Vs. Ashok Paper Mill
(Assam) Ltd. and Anr.* reported in *2023 SCC Online SC 1649*
read with Section 14 of the Limitation Act, 1963.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/-

U			
---	--	--	--

