

(2019) 12 PAT CK 0234

Patna High Court

Case No: Letters Patent Appeal No. 2306 Of 2016 In Civil Writ Jurisdiction Case No. 5150 Of 2016

Priyanka Kumari

APPELLANT

Vs

Bihar School
Examination Board And
Anr

RESPONDENT

Date of Decision: Dec. 18, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 19, 20, 21, 226
- Protection Of Human Rights Act, 1993 - Section 2D, 12, 13, 14, 17, 18

Hon'ble Judges: Shivaji Pandey, J; S. Kumar, J

Bench: Division Bench

Advocate: Arun Kumar Bhagat, Satyabir Bharti

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the Bihar School Examination Board.

2. In the present case, challenge is to the order dated 21.01.2016 passed by the State Human Rights Commission in connection with file no.3268 of

2014 to the extent of awarding the cost of Rs.1,00,000/- in terms of the scheme of the State Government but, the liberty has been given for realization

of Rs.25,000/- from the officer at whose laxity payment could not be made and rest Rs.75,000/- would be recovered from those teachers, officers and

employees, who were responsible for showing the appellant - Priyanka Kumari, to have failed in the matriculation examination.

3. The Bihar School Examination Board is a statutory body, has been created to hold the examination for matriculation as well as the Intermediate for

those children who are studying in the Government schools or private schools. The appellant- Priyanka Kumari, has appeared in the matriculation

examination but, she was declared fail. It was shown that she could secure only 05 marks in the mathematics. The Bihar School Examination Board,

in exercise of power, vide memo no. K/429 dated 06.06.2014 issued public advertisement, inviting applications from the candidates who desire to get

the answer book scrutinized. As per the advertisement, the candidate was required to file application for that purpose subject to payment of Rs.120/-

(Annexure-1 to the writ petition). As the appellant was not satisfied with the marks granted to her, applied for scrutiny of the answer book as she was

sure that she had done well but, wrongly she was granted 05 marks in Mathematics.

4. After proper scrutiny, it was found that she was not given proper marks, accordingly, the marks was modified in the Mathematics and Science

subjects. Accordingly, she has been granted 65 marks in Mathematics and 49 marks in science subjects. Accordingly, communication was made by

the Bihar School Examination Board to the Headmaster of the School including the appellant. While the matter was pending, the appellant approached

the State Human Rights Commission, making complaint that her answer book was not properly evaluated and was wrongly declared to have failed

showing 05 marks in Mathematics subject. On receipt of the notice, the Bihar School Examination Board has filed its reply dated 22.03.2015, wherein

explained the whole incident having stated that there is no loss to Priyanka Kumari as proper correction has been made and it was a sheer human

error, no bad intention can be attached either to a particular person or institution but, the proper assessment has been made without any discrimination

and without any malice. The State Human Rights Commission again directed for re-scrutiny of the paper of Priyanka Kumari and again error was

found and the same has been corrected in the Science subject as earlier 49 marks was granted to Priyanka Kumari having been enhanced to 56

marks. So, on two occasions, there is a revision of marks, which shows that casual approach was adopted by the authority with the future of the

students. After scrutiny, marks was enhanced in Mathematics and Science subjects. Whereafter, the Bihar School Examination Board has issued

notice to concerned examiner and scrutinizer and asked them to show-cause with respect to the irregularity committed by them. When no response

was received, vide memo no.241 dated 10.06.2015 (Annexure-12 to the writ petition), they have been debarred to become the examiner and

scrutinizer. Whereafter, explanation was again filed by the Secretary, Bihar School Examination Board, wherein it has been stated that show-cause

were asked from the person responsible, who were engaged as examiner and scrutinizer, on account of non-receipt of explanation from them, they

have been declared incompetent and blacklisted. Further stated that on enquiry, it was transpired that the officer, staff and employees of the Bihar

School Examination Board are not directly responsible. On 08.09.2015, the uncle of appellant - Priyanka Kumari, has appeared and informed the

Commission that till date Priyanka Kumari has not been given the amount, as mentioned under the scheme framed by the State Government. It

appears from the record that again the case was fixed on 21.01.2016 and certain order was passed, ultimately, the impugned order has been passed.

5. During the argument, it has been informed to this Court that payment of Rs.1,00,000/- has been made to Priyanka Kumari under the scheme framed

by the State Government but, the impugned order has been assailed to the extent of direction has been given by the Commission that the said amount

has to be recovered from the responsible teachers, officers and employees, who were responsible for denying the benefit of scholarship and showing

Priyanka Kumari to have failed in the examination. The learned Single Judge has set aside the order on the ground that persons against whom the

impugned order has been passed were not heard, violates the basic principle of natural justice, which goes to the root of the matter and remanded the

matter for fresh consideration.

6. Learned counsel for the appellant submits that there was no need for hearing of the individual persons, who have been shown irresponsible for

showing the appellant to have failed in the examination, inasmuch as, liberty was given to the authorities, if they so like, they would deduct the said

amount from the responsible persons. As the order itself provides that the Bihar School Examination Board would take action in accordance with law,

which itself includes giving opportunity to the person concerned. At the same time, the order of the State Human Rights Commission is only

recommendatory in nature, there is no mandamus or any direction, but in the order it has been recorded that looking to the facts and circumstances of

the matter as at whose instance Priyanka Kumari has suffered a lot inclusive of fact that she remained in trauma and at the same time it is the loss of

the money.

7. Learned counsel for the Bihar School Examination Board submits that the Human Rights Commission does not have jurisdiction as like the power

and authority given to the High Court under Article 226 of the Constitution of India but, it has been created under the statutory to achieve certain goal.

The Commission has been given power to recommend for the action to be taken as well as on account of human error the appellant was not granted

proper marks, in such matter, the alleged inefficiency of teachers, who engaged in evaluation of the answer book, cannot fall under the violation of the

human rights.

8. Learned counsel for the Bihar School Examination Board further submits that if the appellant is saying that she is entitled to compensation, the

Human Rights Commission is not a proper authority rather the proper forum is the Civil Court or the High Court, in a proper case the High Court can

pass such order compensating the loss suffered by the appellant and as such, the Human Right Commission has wrongly exercised the power, which

is beyond its jurisdiction, inasmuch as, persons, who have been effected by the order having been not heard.

9. Learned counsel for the Bihar School Examination Board also submits that when everything was brought to the notice of the Commission, the

obligation lies with the Commission to verify as to who was the responsible person and at whose instance this situation has arisen and thereafter

proper action could have been taken and as such, the Commission has wrongly exercised the power in the name of violation of human rights. He next

submits that such mistake may happen with different organizations such as, U.P.S.C., B.P.S.C. or all such agencies and such mistake is called the

human error, a person cannot be punished in the name of violation of human rights.

10. This Court vide order dated 16.04.2018 has framed the following questions for answer, are as follows:-

“ (i) Whether the impugned order passed by respondent No.1 is wholly without jurisdiction and the Commission exceeded in its powers in

entertaining the complaint of respondent No.1.?

(ii) Whether the alleged violation of the rights of respondent No.2 could fall within the definition of Human Rights so as to attract the applicability of

the Prevention of Human Rights Act and empower the commission to entertain the complaint of respondent No.2?

(iii) Whether the Commission failed to consider and appreciate that award and scrutiny of marks in an examination conducted by the Board falls within

the scope of the Bihar School Examination Board Act and the Regulations framed thereunder and the Commission could not point out a single

provision of the Act or the Regulations having been violated by the petitioner Board?

(iv) Whether since the petitioner Board having acted in terms of its Act and Regulations and not having violated any of the provisions made

thereunder, the Commission could not have awarded any compensation to the respondent No.2 ?

11. The human rights are basically principles or norms that describes certain standards of human behaviour and are regularly protected as natural and

legal rights in municipal and international law. They are commonly understood as inalienable, fundamental rights to which a person is inherently entitled

simply because she or he is a human being and which are inherent in all human beings, regardless of their nation, location, language, religion, ethnic

origin, or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of

being the same for everyone. They are regarded as requiring empathy and the rule of law and imposing an obligation on persons to respect the human

rights of others. It is considered that there should not be taken away except as a result of due process based on specific circumstances; for example,

human rights may include freedom from unlawful imprisonment, torture, and execution. The idea of human rights suggests that if the public discourse

of peacetime global society can be said to have a common moral language, it is that of human rights. The universal declaration of human rights is a

historic document that was adopted by the United Nations General Assembly at its third session on 10 December, 1948 as Resolution 217 at the

Palais de Chaillot in Paris, France of the then 59 members of the United Nations, 48 voted in favour, none against, eight abstained, and two did not

vote. The background of human rights that during World War II, the Allies adopted the Four Freedoms i.e. freedom of speech, freedom of religion,

freedom from fear and freedom from want as their basic war aims. The United Nations Charter reaffirmed faith in the fundamental human rights and

dignity and worth of the human person and committed all members states to promote universal respect for, and observance of human rights and

fundamental freedoms for all without distinction as to race, sex, language, or religion. When the atrocities committed by Nazi Germany became fully

apparent after World War II, the consensus within the world community was that the United Nations Charter did not sufficiently define the right to

which it referred. A universal declaration that specified the rights of individuals was necessary to give effect to the Charter's provisions of human

rights.

12. The statement of objects and reasons of the Protection of Human Rights Act postulates that India is party to International Covenant on Civil and

Political Right and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on

6th December, 1966. This Protection of Human Rights Act has been enforced with effect from 10.01.1994. In Section 2D “human rights” has

been defined, when the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the

International Covenants and enforceable by Courts of law, itself delineate that those rights must be guaranteed by the Constitution or embodied in the

Internal Covenants as well as enforceable by the Courts of Law. So, two conditions are there, one of the conditions that it must be found embodied

either in the Constitution or International Covenants and that too enforceable by the Courts in India. Chapter III deals with the function and power of

the Commission, which provides that Commission shall perform all or any of the following functions, namely: (a) inquire, suo motu or on a petition

presented to it by a victim or any person on his behalf or on a direction or order of any Court, into complaint of certain violation as mentioned in

Section 12. Section 13 of the Act describes the power relating to inquiries, which stipulates that the Commission while conducting enquiry into the

complaints under this Act, has all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908. Section 14 of the Act stipulates

that the Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the service of any officer or investigation

agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case

may be. In Clause 14(2) certain powers have been conferred for carrying out the investigation. Section 17 of the Act deals with the inquiry into the

complaints. Section 18 of the Act deals with steps to be taken during and after inquiry.

13. It will be relevant to quote Sections 2D, 12, 17 and 18 of the Protection of Human Rights Act, which are as follows:-

“2.D. “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in

the International Covenants and enforceable by courts in India;

12. Functions of the Commission- The Commission shall perform all or any of the following functions, namely:-

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court], into complaint of

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(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State

Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the

inmates thereof and make recommendations thereon to the Government;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and

recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these

rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non- governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

17. Inquiry into complaints. "The Commission while inquiring into the complaints of violations of human rights may

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto

within such time as may be specified by it:

Provided that

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been

initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps during and after inquiry. "The Commission may take any of the following steps during or upon the completion of an inquiry held under this

Act, namely:

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment

thereof by a public servant, it may recommend to the concerned Government or authority

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider

necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the

members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the

concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on

the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken

or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

14. On careful consideration, it appears that the human rights has been defined in a very widely worded without prescribing any guideline. The rights

conferred or arising under Articles 19 and 21 of the Constitution are the basic rights can be said to be human rights, the comprehension and rider of

human right should be understood under the aforesaid circumstances, which is already embodied in our Constitution but, rider has been given that it

must be guaranteed by the Constitution and enforceable by the Courts in India. Section 12 of the Act stipulates that the Commission suo motu on a

petition presented to it by a victim or any person on his behalf or on a direction or order of any Court, shall look into the complaint of violation of

human rights or abetment thereof, negligence in the prevention of such violation by a public servant. Section 17 of the Act has basically provided the

powers and procedure on the complaints. Section 18 of the Act stipulates that on receipt of the complaint when the inquiry discloses to the

Commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may

recommend to the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim or the

members of his family as the Commission may consider necessary, to initiate proceedings for prosecuting or such other suitable action as the

commission may deem fit against the concerned person or persons or recommend to the concerned Government or authority at any stage of the

inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary. The

Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned

Government or authority shall, within a period of one months, or such further time as the Commission may allow, forward its comments on the report,

including the action taken or proposed to be taken thereon, to the Commission. The Commission shall publish its inquiry report together with comments

of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the

recommendations of the Commission.

15. Section 18 of the Act is very much clear that power has been conferred on the Commission to hold inquiry, in the event of having found the

violation of human right, and will recommend to the concerned Government for certain action. So, the power of the Commission is recommendatory in

nature and directly it cannot be enforced upon. The power of the Commission is not akin to the power of the Writ Court as the power under Article

226 is Constitutional power, which is plenary and prerogative in nature not only to issue writs under Article 226 but, also to determine its own powers.

The power under Article 226 is plenary power but, itself has self-imposed restrictions whereas the Commission has to act within the province

prescribed in the statutory provisions and those powers cannot be compared to the power conferred under Article 226 of the Constitution of India.

16. This issue has been considered in the case of The State of Bihar through the Chief Secretary, Government of Bihar, Patna & Ors. vs. Bihar

Human Rights Commission and Ors. reported in 2013 (4) P.L.J.R. 436, wherein this Court placed reliance on the judgment reported in (2011) 1

S.C.C. 694 (Siddharam Satlingappa Mhetre vs. State of Maharashtra) and quoted paragraph no.36 of the aforesaid judgment, which is as follows:-

“36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be

found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and

liberty...”

17. In that case, the Human Rights Commission has exercised the power in giving direction for enhancement of remuneration comparing the work

with other class of persons as those were contract labourers, making comparison with regular employee, who had entered into service following

regular procedure as employee and this Court has held that fixation of wages and pay, is an executive function and highly complex and technical

matter involving a host of considerations and factors for fixing the pay and wages of the employees including the capacity of the employer to pay

minimum wages and ultimately it has been held that claim of payment at enhanced rate cannot be said to be violation of human right as it does not fall

under the sweep of the human rights as the claiming of higher pay scale more than the minimum wages cannot be said to be violation of any human

rights. If there would have been a case of less pay than the minimum wages, in such circumstance, it would be very difficult for a human being to live

and sustain in this world but, claiming of remuneration more than the minimum wage depends on different factors, cannot be said to be violation of

human rights.

18. Learned counsel for the appellant has placed reliance on the judgment of the Madras High Court passed in the case of Rajesh Das vs. Tamil Nadu

State Human Right Commission (W.P. Nos. 21604 to 21607 of 2000), wherein the Madras High Court has found the violation of human right.

However, this judgment is not applicable to the facts of the present case as in the present case, the dispute is with regard to granting wrong marks to

the appellant, on her complaint, scrutiny of her answer book was done on two occasions and ultimately correct marks has been granted to the

appellant. Claim has been made by the appellant that her dignity has been downgraded and as such, it is violation of human rights.

19. In the Advanced Law Lexicon by P. Ramanatha Aiyar (Part- 2) the meaning of "dignity" has been defined in the following manner:-

"Dignity. Claim to respect; title giving dignity. Dignity means, "Honour and Authority : reputation, & c. Titles of Duke, Earl, Baron, & c, are the

highest names of dignity; and those of Baronet, Knight, Serjeant at Law, & c., the lowest." (Jacob)

1. the state of being noble; the state of being dignified.

2. An elevated title or position. 3. A person holding an elevated title; a dignitary. 4. A right to hold a title of nobility, which may be hereditary or for

life. (Black, 7th Edn., 1999) "Dignities may be hereditary, such as peerages . . . or for life, such as life peerages and knighthoods. The dignities of

peerages and baronetcies are created by writ of letters patent, that of knighthood by dubbing as knight. A dignity of inheritance may also exist by

prescription. Dignities of inheritance are incorporeal hereditaments having been originally annexed to the possession of certain lands or created by a

grant of those lands and are generally limited to the grantee and his heirs or his heirs of the body. If heirs are not mentioned, the grantee holds for life

only. The heirs are determined by the rules which governed the descent of land prior to 1926." DAVID M. WALKER, The Oxford Companion to

Law 358 (1980).

20. In the Stroud's Judicial Dictionary of Words and Phrases, the meaning of "dignity" has been defined in the following manner:-

"DIGNITY. Dignity means, "honour and authority; reputation, & c. Dignities may be divided into superior and inferior; as the titles of duke, earl,

baron, & c. are the highest names of dignity; and those of baronet, knight, serjeant at law, & c., the lowest (Jacob). See hereon 3 Cru. Dig. Title 26;

Cruise on Dignities.

An hereditary dignity is an incorporeal hereditament. See HONOUR.

A dignity in the church is where a spiritual person hath a function which hath also a jurisdiction, e.g. bishop, dean, etc. (Boughton vs. Gousley, Cro.

Eliz. 553). Therefore, neither a person, vicar, chaplain, provost, precentor or a gospeller holds a dignity (ibid.). In that case it was said that "an

archdeacon is not a name of dignity.

21. The word "dignity" has not been defined anywhere in the Protection of Human Rights Act, and as such, normal meaning in the dictionary is

to be taken into service as mentioned in the definition Section. In the present case, nowhere it has been stated of violation of any Constitutional right as

it does not fall in the category of Articles 19, 20 and 21 of the Constitution of India. It is a case of granting wrong marks, which later on, rectified, was

a human error, would not attract awarding of cost. It is further to say that the order has been passed without hearing of the persons, who are going to

be effected and it also does not fall within the four corners of violation of fundamental right. Error is always attached with human, no allegation of

having been committed with an ulterior motive has been made. In the case at hand, the Bihar School Examination Board, corrected the error in

awarding the marks as well as those involved in evaluation of answer book have been declared incompetent and blacklisted. At the same time, the

compensation amount under the scheme has been paid to the appellant by the State Government. In our view, awarding of marks incorrectly cannot

be said that "dignity" has been downgraded in terms of human rights, does not fall under the definition of violation of human rights. It would apply

when the person has been deprived of basic rights, which are basic intents of all human being.

22. In such view of the matter, this Court does not find any merit in this appeal. Accordingly, this Letters Patent Appeal is dismissed and the judgment

and order of learned Single Judge dated 19.11.2016 passed in C.W.J.C. No. 5150 of 2016 is hereby confirmed. Accordingly, the questions framed

hereinabove are answered in the above term.