
(2022) 11 PAT CK 0023

Patna High Court

Case No: Letters Patent Appeal No. 1702 Of 2019 In Miscellaneous Jurisdiction Case No. 4037
Of 2014

Uma Shankar Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 7, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 136, 215, 226

Citation: (2022) 11 PAT CK 0023

Hon'ble Judges: Ashutosh Kumar, J; Nawneet Kumar Pandey, J

Bench: Division Bench

Advocate: Murari Narain Chaudhary, Vijay Kumar, Prabhat Kumar Verma

Final Decision: Disposed Of

Judgement

Heard Mr. Murari Narain Chaudhary, learned Advocate for the appellants and Mr. Sanjay Kumar Ghosarwe for the State.

The present appeal is against the order dated 04.07.2019, passed by the learned Single Judge in a contempt jurisdiction arising out of CWJC No. 1807

of 2014. The learned Single Judge, while deciding CWJC No. 1807 of 2014 had directed the Collector, East Champaran at Motihari to ensure that the

steps initiated by issuing advertisement pursuant to the order of the Commissioner passed in the light of the earlier orders of the High Court be

completed and appointments on all available vacancies be made from the panel prepared/revised in the process, positively within six months from the

date of receipt/production of a copy of that order.

While giving the afore-noted direction, the learned Single Judge, in the writ petition, also observed that since the advertisement had been published

after 2002 for the first time, the respondent/State would consider relaxing the age of the applicants/writ petitioners, eligible for appointment in accordance with law.

It appears from the averments made in the present appeal as also from the submissions advanced on behalf of the appellants that they were not

granted age relaxation and appointments were made from the panel which was prepared later. The appellants thereafter, preferred a contempt petition

before this Court vide MJC No. 4037 of 2014, in which the only grievance of the appellants was that the process of appointment was carried out after

the time-limit given by the learned Single Judge while dealing with the writ petition, in the first instance.

We find from the order passed by the contempt court that no such grievance of not giving age-relaxation was raised by the appellants.

Mr. Chaudhary, learned counsel for the appellants, while defending the filing of the present appeal, has drawn the attention of this Court to the

observation made by the Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. Vs. Chunilal Nanda* (AIR 2006 SC 2190), whereby it has been

held that if the High Court, for whatever 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 not of

a learned Single Judge and there is a provision for intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of

India (in other cases).

It has further been submitted that a Division Bench of this Court based its decision and accepted the appeal against an order passed in contempt in

LPA No. 343 of 2013, arising out of an order passed in MJC No. 930 of 2012.

In the afore-noted case [LPA No. 343 of 2013 (supra)], the writ petition had been disposed of by the learned Single Judge wherein there was prayer

for regularization on the plea that the person concerned had worked on daily wages for a particular period and the Court had remanded the matter to

the Collector of a particular district for determining vacancy of a particular year and to consider regularization, if vacancy was available and other

similarly situated persons were regularized. The Collector did not grant any relief to the writ petitioners therein, necessitating filing of a contempt

petition vide MJC No. 930 of 2012. In that contempt jurisdiction, the learned Single Judge had issued directions for consideration of regularization as

per seniority and not category of vacancy.

Since a totally new issue came up for consideration, in which fresh directions were given in the contempt jurisdiction, the State chose to prefer an

intra-court appeal against the aforesaid order passed in contempt jurisdiction, as presumably the orders appeared to have been passed under Article

226 jurisdiction. In this context, the Division Bench of this Court in LPA No. 343 of 2013 (supra), relied upon the observation of the Supreme Court in

Midnapore Peoples' Bank Ltd. Vs. Chunilal Nanda (supra) that a party cannot be rendered remediless, if positive directions are issued in

the nature of an order under Article 226 of the Constitution of India in a contempt jurisdiction under Article 215 of the Constitution of India.

Thus, maintaining an appeal against an order passed in contempt jurisdiction in that instance was contextual and not for the purposes of by-passing the

requirement of an appeal under the Contempt of Courts Act.

The argument of Mr. Chaudhary, therefore, that this appeal is maintainable, is not acceptable to us.

Apart from that, it appears that in the present case, the request of the appellants for consideration of age relaxation to them has been declined, which

could have been challenged by the appellants in a fresh writ petition as was held by the contempt court, against which order the appellants have

preferred the present appeal.

We endorse the view of the learned contempt court that in case the appellants were aggrieved because of non-consideration of their claim of age

relaxation on account of delayed appointment process, such action was assailable in a writ jurisdiction and not in an appeal against an order passed in contempt jurisdiction.

After having heard the Court dictate the order in open Court and considering it more appropriate, Mr. Chaudhary seeks to withdraw this appeal in order to agitate his cause in an appropriate forum, if so desired.

The appeal stands dismissed as withdrawn.