

**(1995) 07 PAT CK 0027**

**In the Patna High Court**

**Case No :** MJC No. 1531 of 1993 with MJC No's. 743/92, 1052/92, 1111/92, 1268/92, 1483/92, 1653/92, 1790/92, 853/93, 937/93, 969/93, 1064/93, 1187/93, 1223/93, 1225/93, 1254/93, 1278/93, 1283/93, 1294/93, 1302/93, 1303/93, 1304/93, 1351/93, 1374/93, 1589/93, 1620/9

Nil Madhab Das and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 21-07-1995

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 12, 2

**Citation :** (2003) 3 JCR 461

**Hon'ble Judges :** N. Rai, J;G.B. Patanaik, J

**Bench :** Division Bench

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## **Judgement**

1. These applications for initiating proceedings under the provisions of the Contempt of Courts Act essentially raises the question as to whether the opposite parties have violated any of the directions issued by this Court in CWJC No. 227 of 1988. It is, therefore, necessary to trace the history leading to the filing of the aforesaid writ application and the order passed thereon.

2. There existed about 2000 vacancies in the cadre of Assistant Teachers in various elementary schools in the district of Santhal Parganas. Pursuant to the advertisement issued for filling up those posts, candidates both trained and untrained matriculates made their applications and they were called for interview. A panel was drawn up which was approved by the Establishment Committee. The persons from the panel were appointed in batches. Subsequently an advertisement was issued in the local newspaper wherein it was indicated that all appointments of elementary teachers made during the tenure of Shri Hari Narain Jha, the then District Superintendent of Education would stand annulled. Several teachers who were affected by the aforesaid order approached this Court in Civil Writ Applications which were filed in the year 1988. This Court quashed the orders of termination but gave liberty to the

Commissioner of Education to hold an enquiry by giving individual notices to the persons likely to be affected to show cause. About 600 teachers were given notice pursuant to the aforesaid observations of this Court and ultimately the appointment of several such teachers were cancelled by an order dated 18.3.1986 on the ground that there did not exist any panel and the so called letters of appointment on the basis of which several teachers claimed to have been appointed were forged one. The further finding was that the Establishment Committee had never approved the panel. It was also held that untrained hands could not have been appointed under the law. This order was assailed again in this Court in CWJC No. 227 of 1988 and a Bench of this Court disposed of the same on 11.8.1989. This Court observed that the opposite parties should proceed to take up the appointment of teachers of Elementary Schools of Santhal Pargana and Deoghar by inviting applications from the petitioners therein as well as other persons who have been removed and their case may be considered after relaxing the age limit and the matter may be reconsidered and if they satisfy the eligibility condition they may be selected and appointed.

3. The judgment of this Court in the aforesaid writ application was assailed in the Supreme Court in SLP (Civil) 11699 of 1990. The Supreme Court held, that the direction of the High Court to the State to hold a fresh selection has become final as the State has not come up in appeal against the said judgment. The Apex Court, therefore, upheld the order of this Court dated 11.8.1980 and observed that the selection process contemplated in the High Court's order should be worked out latest by the 30th June, 1991. It was also observed that in considering the suitability for selection the rules which were in force at the time the teachers were recruited would be taken into account and disqualification shall not be imposed on the basis of any altered rule. It was further observed that it would be open to the State to consider the claim of teachers who came after the altered rule in terms of the rules in force. The Education Secretary of the State of Bihar was directed to reply compliance of the direction to the Registry of the Supreme Court within two weeks of the outer limit of 30th June, 1991. The State Government intimated the fact that after working out the directions of the High Court given in CWJC No. 227 of 1988 which was affirmed by their Lordship of the Supreme Court in SLP (Civil) 11699 of 1990 only 81 persons were found entitled to be appointed and those 81 persons have been appointed.

4. Thereafter Contempt Petitions were filed before the Apex Court which were registered as Contempt Petition Nos. 236-40/91 and 263/91 alleging therein that the directions of the High Court as affirmed by the Supreme Court have not been properly followed. In considering the aforesaid Contempt Petitions the Supreme Court found that the Commissioner-cum-Secretary, Human Resources Department, Government of Bihar, who had passed the order dated 28.6.1991 appointing 81 persons after completing the processes of selection was of the view that only trained teachers were eligible for appointment in both categories while untrained teachers in exceptional circumstances could be appointed against the reserved categories of scheduled Castes, and Scheduled Tribe, Urdu and

Sanskrit only and accordingly excluded such untrained teachers who did not belong to any of the aforesaid categories from consideration. Before the Supreme Court while Mr. Shanti Bhushan appearing for the petitioners contended that the authorities have misconstrued the provisions of the executive instructions and regulations relating to appointment of primary school teachers in the State of Bihar, the Counsel appearing for the State contended that the regulations have been correctly followed and interpreted by the contempt authority. The Supreme Court, therefore, examined the provisions of the Bihar Non- Government Primary School (Taking over of Control) Ordinance, 1976 as well as the directions relating to the preparation of waiting-list and appointment of teachers etc, and came to the conclusion that untrained candidates were also entitled of being appointed in each category but such appointment be made only when the trained teachers are not available in the particular category. It also held that trained teachers in order of sequence would get preference over untrained teachers and consequently the interpretation placed by the Commissioner is not correct and such an interpretation, if accepted, would efface the very effect of the order of the Supreme Court dated 7.2.1991 and would defeat the object of the order which was aimed at providing that all schools must have teachers. The Court came to the conclusion that the opposite parties have not wilfully or deliberately flouted or disobeyed the orders of the Court dated 7.2.1991 and appear to have misinterpreted the directions and accordingly dropped the contempt proceedings, but it further directed that the respondents should properly comply with the orders of the Court and select and appoint untrained teachers who are otherwise qualified for appointment in all categories without putting the condition of training or age bar against them where trained teachers are not available. The State was called upon to conclude the process of such selection in the light of such observations.

5. As the State Government found difficulties in complying with the aforesaid direction of the Supreme Court an application was filed for extension of time as well as for clarification of the aforesaid order dated 22.11.1991. On behalf of the teachers fresh contempt petitions were filed which were registered as Contempt Petition Nos. 89-93/92, 121 & 190 of 1992 alleging that direction of the Court in Contempt Petition Nos. 236-40/91 and 263 of 1991 have been violated. The Supreme Court ultimately directed that all those who were petitioners in the contempt petitions should be appointed by 10.5.1992 and pursuant to the aforesaid direction the State Government issued appointment orders in favour of 331 teachers on 6.5.1992. The Supreme Court passed an order on 11.5.1992 accepting the compliance made by the State but further observed that the other part of the order dated 7.2.1991 regarding payment of arrear salary and consequential service benefit should also be complied with. On 3.9.1992 the Supreme Court extended time for compliance of the direction regarding payment of salary etc. and also directed that the State may examine the claim of 43 proforma respondents of the contempt petition for being appointed. Finally by order dated 15.11.1992 the Supreme Court directed appointments should be

given to those 43 proforma respondents and observed that the rest of the pending cases either in Supreme Court or in other Court would be decided on merit. The State Government issued letter of appointment in respect of those 43 persons by order dated 23.12.1992.

6. On 30.11.1992 in SLP (C) No. 10051 of 1990 their Lordships of the Supreme Court observed that if there are vacancies and if there are no trained teachers available, then the untrained teachers who were appointed prior to the new rule came into operation, would be reinstated in service if after subjecting them to the selection process they are found suitable and if there are no vacancies, they would be empanelled according to their seniority and would be appointed according to their seniority in the vacancies arising in future and unless this panel is exhausted, no new appointments of untrained teachers would be made from outside.

7. In Civil Appeal Nos. 492-94 of 1993 arising out of SLP (C) Nos. 10634-36 of 1992, the Supreme Court further reiterated and held that if there are vacancies and if there are no trained teachers available, the untrained teachers who were employed prior to the new rule came into operation, would be reinstated in service if after subjecting them to the selection process they are found suitable. If there are no vacancies, they would be empanelled according to their seniority, and would be appointed according to their seniority in the vacancies arising in future and unless this panel is exhausted, no new appointments of untrained teachers will be made from outside. Some of the appointees pursuant to the order of the Supreme Court again filed some applications alleging that they have not been fitted in proper scale. But the Supreme Court by its order dated 4.3.1993 held that nothing survives in the contempt petition in view of the order dated 23.12.1992 passed by the State of Bihar. In a further contempt petition No. 175 of 1993 arising out of Civil Appeal No. 5148 of 1992 the Supreme Court clarified that the claim of only those persons who applied and appeared for verification of certificates/interview should be considered. So far as others are concerned, no opinion was expressed as some of the matters were pending in the High Court.

8. In January, 1993 several other writ petitions which remained pending in this Court were disposed of with direction that the State should dispose of the case of those petitioners in the light of the directions and observations of the Supreme Court. It would thus appear that the Court while disposing of the writ applications on 20th January, 1993 did not adjudicate the rights of the parties and merely disposed of with the observation that their cases should also be considered in the light of the directions given by the Supreme Court.

9. The State Government prepared a draft panel district wise and category wise in accordance with the directions of this Court as well as the Supreme Court in the aforesaid several cases and issued an advertisement in daily newspaper inviting objections to the same by any claimant within a specified date. Some objections were received and then final panels were prepared on 25.7.1994 in

respect of the districts of Dumka, Deoghar and Godda. In respect of the district of Sahebganj final panel was prepared on 24.8.1994. These panels had been produced before the Supreme Court in Contempt Petition No. 175 of 1993 and Civil Appeal No. 5148 of 1992 and the Supreme Court passed an order on 2.9.1994 that if there are any grievances with regard to the non-inclusion of any of the petitioners who were covered by the orders of the Supreme Court, the Director of Primary Education would look into them and rectify the mistake, if any, within four weeks from the receipt of the representation made. The representation, if any, should be made within four weeks from the date of the order and the representation made thereafter will not be entertained. The Supreme Court obviously passed the aforesaid order as from time to time grievances were being made that the orders of the Court are not being complied with. It, therefore, specified that all objections/representations maybe made within four weeks which would be considered and any representation thereafter will not be considered. Pursuant to the aforesaid order of the Supreme Court, the Director of Primary Education received representations numbering about 1200 and on examining the same in the light of the directions given by this Court (sic).

10. In these contempt applications the gravamen of the allegations are that the opposite parties have not complied with the original direction of this Court in CWJC No. 227 of 1988 and failure on their part to appoint these applicants tantamounts to violation of Court's direction. The stand of the opposite parties, on the other hand, is that the judgment of this Court having been considered by the Supreme Court and appropriate orders and directions having been passed therein and the State having complied with the directions of the Apex Court as would be apparent from the orders referred to earlier, it is only inappropriate for the petitioners to contend that there has been a violation of any direction either of this Court or of the Supreme Court.

11. u/s 2(b) of the Contempt of Courts Act, the expression "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. This definition of "civil contempt", therefore, involves the existence and proof of - (1) a judgment, decree, direction, order or writ of a court, (2) disobedience to such judgment and (3) disobedience or breach must be wilful. A proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation. If a direction of a Court (sic) respondent upon determination of some other facts then also violation of such direction cannot give rise to proceedings for civil contempt.

12. From the narration of facts in this order as well as from the submissions made by the counsel appearing for several applicants for initiation of contempt proceeding we find that their entire case hinges upon the argument that the direction given by this Court in CWJC No. 227 of 1988 must be held to have been violated inasmuch as several other applications were disposed of with the mere observation that their cases should be governed by the aforesaid judgment, but

when the aforesaid judgment of this Court was under consideration by their Lordships of the Supreme Court in Special Leave Applications and from time to time their Lordships of the Supreme Court have also entertained contempt applications and issued directions and ultimately the State carried out those directions and appointments to those teachers who have been found to be qualified have been given and finally the Supreme Court itself accepted the position by order dated 15.11.1992 passed in Contempt petitions 89-93, 121 and 190 of 1992, it is difficult for us to hold that the opposite parties can be said to have wilfully violated any direction of this Court in relation to the present applicants. A panel having been prepared and produced before their Lordships of the Supreme Court after considering the objections received from several teachers pursuant to advertisement (Vigyapti) vide-PR-4318 (Shiksha-123) 93-94 and on consideration of the same as well as the grievances made by several teachers before the Supreme Court, the Apex Court having further directed that any objection/representation to the same to be made within four weeks and no representation thereafter would be entertained and considered and such objections numbering 1200 having been received within the specified period and having been duly considered and appropriate orders thereon having been passed by the Director of Primary Education on 29.10.1994, it must be held that the orders and directions of this Court as well - the Apex Court have been complied with. In the circumstances, in our considered opinion no case for proceeding against the opposite parties under the provisions of the Contempt of Courts Act has been made out and these contempt proceedings, accordingly, are dropped.