

(2019) 02 PAT CK 0052

In the Patna High Court

Case No : Civil Review No. 379 Of 2017 In Letters Patent Appeal No. 347 Of 1998

Ram Pratap Paswan And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Citation : (2019) 1 PLJR 864

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashwani Kumar Singh, J; Anjana Mishra, J

Bench : Full Bench

Advocate : Binayak Kumar Shrivastav, Lalit Kishore

Final Decision : Dismissed

Judgement

I.A. No. 7073 of 2017

Heard Shri Binayak Kumar Srivastava, learned counsel for the applicants, and Shri Lalit Kishore, learned Advocate General for the State of Bihar.

This Review application has been filed with a delay of 3 years, 5 months and 11 days. The cause shown is not about the inability of the applicants to

approach earlier, but inspired and encouraged by the delivery of a decision by a learned Single Judge of this Court on 6th of May, 2015 in C.W.J.C.

No. 4499 of 1997 (Chandeshwar Choudhary & Ors. Vs. The State of Bihar & Ors.) Shri Srivastava contends that the applicants, being identically

situated, could not have been given a differential treatment and, therefore, the judgement by the Full Bench dated 10th of March, 2014 in L.P.A. No.

347 of 1998, deserves to be reviewed which may not be, in essence, the correction of an error apparent on the face of the record, but a review for

settling the law keeping in view the decision which has been relied upon by the

learned counsel for the applicants.

We do not find this to be a very sufficient cause to condone the delay, yet in order to do substantial justice and in order to settle the law on this issue

which has been raised and already decided by the Full Bench, it would be appropriate to render our opinion as to why we seek to re-affirm the earlier

view rendered on 10th of March, 2014, which does not require any review on the grounds raised in this application. Accordingly, I.A. No. 7073 of

2017 stands disposed off.

L.P.A. 379 of 2017

The background in which the reference had been made for being answered by the Full Bench is that the three applicants before us (out of whom the

Applicant No. 3, Mr. Ram Dhani Ram, is stated to have died, and the Applicant Nos. 1 and 2 Ram Pratap Paswan and Ram Pravesh Paswan have

already attained an age which is beyond the age of superannuation of the services involved in the present dispute) claimed appointment on the basis of

their selections on the post of temporary Clerks in the office of the Registrar through a competitive examination conducted by the Subordinate

Services Selection Board. One Ashok Chaudhary had also appeared in the said examination and he was also a candidate in the same examination, the

results whereof were declared simultaneously. It appears that the Hindi paper of the said Ashok Chaudhary was cancelled and his name was not

recommended, as a result whereof he filed C.W.J.C. No. 5170 of 1993. The answer script was produced in Court and what was found was that

Instruction No. 2 of the said examination had been violated. The said instruction is extracted hereinunder:

â??2-

? â??

The claim of Ashok Chaudhary was not accepted by this Court as it was found that he had endorsed his name and the name of his village while

answering a question in respect of letter writing. When the matter was disposed off on 16th December, 1994 in the case of Ashok Chaudhary (supra),

the following direction was also issued by the Division Bench:

â??Pursuant to order dated January 12, 1994, answer book of the Hindi paper has been produced by Mr. S.K. Ghose, learned counsel appearing on

behalf of the Bihar Public Service Commission. We have examined the answer book and we are satisfied that by disclosing his identify (his name, name of the village etc.) the petitioner tried to influence the Examiner and, thereby, violated Instruction No. 2 printed on the answer book. In that view of the matter, we do not find any error in the action of the Commission in not recommending the Board for appointment.

Counsel for the petitioner, however, stated that the Board/Commission adopted double standard in the matter inasmuch as it has condoned similar

default on the part of other candidates, who also like the petitioner, had disclosed their identity. Counsel in reply to our query could not cite any specific

instance. He, however, stated that if the answer books of Hindi papers of candidates mentioned at serial nos. 1 to 10 of the Annexure-3 are examined,

at least 3-4 candidates would be found to have disclosed their identify.

We, accordingly, direct the Bihar Public Service Commission to examine the aforesaid grievance of the petitioner and issue appropriate order in

accordance with law.

This application is dismissed, subject to directions as mentioned above.â??

It appears that thereafter an exercise was undertaken and the names of 6 examinees further surfaced including that of the present 3 appellants with

regard to whom the same mistake was discovered and, consequently, on account of violation of the aforesaid instruction no. 2, their examinations

were also cancelled and their services stood terminated. It is in this background that the appellants filed their writ petitions that has given rise to the

appeal and the present review application.

A learned Single Judge of this Court vide judgement dated 20th of February, 1998 dismissed the writ petition of the appellants feeling itself bound by

the Division Bench observations made in the case of Ashok Chaudhary (supra) after examining the answer sheets and having found that the

examinees had written their names while answering the aforesaid question relating to letter writing. This, according to the learned Judge, was a clear

violation of Instruction No. 2 and factual findings were recorded in detail which is evident from paragraph Nos. 14 & 15 of the said judgement

extracted hereinunder:

â??14. Mr. Ashok Kumar Singh, learned Senior counsel appearing on behalf of the Commission on the other hand, has submitted that while

interpreting Instruction No. 2, which has been extracted hereinabove, the Court should consider real intent behind issuing such instruction. He has

submitted that such instruction was issued to ensure that the candidates might not disclose their identity, in any manner, so as to

influence the examiner. He has placed reliance upon following Supreme Court decisions in support of his contentions:-

(1) (2005) 4 SCC 530 (Standard Chartered Bank & Ors. Vs. Directorate of Enforcement & Ors.)

(2) (2003) 7 SCC 628 (Balram Kumawat Vs. Union of India & Ors.)

15. He has laid great emphasis on Full Bench decision of this Court in case of Ram Pratap Paswan and others (supra) to contend that cases of

these petitioners are identical and it is not permissible for this Court to take a different view. He has submitted that services of six persons were

terminated by the Registration Department consequent upon cancellation of recommendation made by the Commission earlier on same/similar

grounds, which came to be finally decided in case of Ram Pratap Paswan and others (supra). All of them had approached this Court by filing writ

petition which came to be finally decided in L.P.A.No. 347 of 1998 by the Full Bench and, therefore, he has emphasized that this Court should not

take a different view than what has been taken by the Full Bench of this Court. In course of his submission, he has referred to Supreme Court

decision reported in (1997) 5 SCC 1 (State of U.P. and another Vs. C.L. Agrawal and another), with special reference to paragraph 19, which reads

thus:-

“19. We are dismayed that the Division Bench hearing the said writ petition should have proposed to examine the issue notwithstanding the

aforesaid pronouncement of the Full Bench judgement ...”. If the judgements in the cases of Supreme Court Employees’ Welfare Assn. and

H.C. Puttaswamy were cited and the respondents to the said writ petition submitted that the Full Bench judgement was erroneous by reason thereof,

the proper course for the Division Bench to follow, if it found any merit in the submission, was to refer the said writ petition to a Full Bench. Judicial

discipline requires that a Division Bench should not examine de novo an issue that is concluded by the decision of a Full Bench of that High Court.”

“

However, the learned Single Judge was of the opinion that since this was a penal provision, it ought to have construed in a somewhat different way

but, on account of the Division Bench pronouncement, the writ petition came to be dismissed with certain observations.

Against the judgement of the learned Single Judge, the appellants preferred L.P.A. No. 347 of 1998. The Division Bench which heard the L.P.A. was

of the opinion that the matter requires to be considered by a Larger Bench as it prima facie was not in agreement with the Division Bench judgement

in the case of Ashok Chaudhary (supra). The order passed by the Division Bench referring the matter on 23rd July, 2007 is extracted hereinunder:

After selection was completed pursuant to an advertisement for recommending the candidates for appointment to the posts of routine Clerk. Sri

Ashok Chaudhary was not recommended. Refusal to recommend him was the subject matter of challenge in C.W.J.C.No. 5170 of 1993 which was

decided by a Division Bench by an order dated 16.12.1994. As would be evident from the said order, it was contended before the Division Bench that

Ashok Chaudhary could not be recommended inasmuch as he used his name while answering a question and that being violation of the mandate as

indicated in the answer script, he disqualified. This seems to have been accepted by Division Bench.

The Division Bench directed the Commission to look into the answer scripts of 10 of the candidates named by the learned counsel for Shri Ashok

Chaudhary. The Commission looked into the answer scripts of those ten candidates and found amongst others that the appellants are also guilty of

similar crime. In such view of the matter the appellants were asked to show cause and after the appellants had shown causes, their recommendations

were withdrawn. Consequently, they lost their appointment.

Having regard to the fact, admittedly, while answering question no. 2 i.e. writing a letter, the appellants used their names as persons writing the letters

in question, according to us we are not in a position to accept the contention of the Commission as was accepted by the Division Bench in the

judgement referred to above that disclosing names in such fashion is a violation of the mandate contained in the answer script to the effect that the

candidates will not write their names in the left portion of the first page of the answer script.

In those circumstances we feel that the matter should be decided by a larger Bench and accordingly refer the matter to the Honâ??ble the Chief

Justice for constitution of a larger Bench.â??

The matter was finally heard and the Full Bench vide a judgement dated 10th March, 2014 clearly found that instruction No. 2 extracted hereinabove

clearly records that the candidates are not required to disclose their identity on any page of the answer book. It may be put on record that

Chandeshwar Choudhary and another who were similarly terminated had already filed C.W.J.C. No. 4499 of 1997 in which an interim order had been

passed in their favour and the said writ petition remained pending that has been ultimately allowed on 6th May, 2015. Instruction No. 2 only refers to

the writing of a name as a disqualification for the candidate. It is this aspect which was noted by the learned Single Judge in the case of Chandeshwar

Choudhary and Anr. (supra) and in the judgement dated 6th May, 2015 after having noticed the Full Bench judgement in this case, came to the

conclusion that in the case of Chandeshwar Choudhary (supra) the petitioner No. 1 therein was on a different footing inasmuch as factually he had not

written his name but only the name of his village. Accordingly, the learned Single Judge held that the case of Chandeshwar Choudhary (supra) does

not appear to have violated the said instruction as the instruction was to be construed strictly which only prohibited the writing of a name and not of a

village. So far as the case of Petitioner No. 2, Punyadeo Manjhi in the said case is concerned, the learned Single Judge arrived at a conclusion that

since he had written his name, therefore, the learned Single Judge was bound by the Full Bench decision of this Court and, accordingly, his claim was

distinguished and then sent to the State Government for a reconsideration and for taking a final decision.

It is in this background that the learned counsel for the appellants has vehemently urged that two of the surviving appellants deserve the same

treatment as in the case of Chandeshwar Choudhary (supra) and, to that extent, the judgement of the Full Bench be reviewed and an appropriate relief

be granted to the said appellants.

Having considered the submissions raised and in the aforesaid factual backdrop, what we find is that the first impediment in the passage of the

appellants is the order of the Apex Court dated 30th of June, 2014 in S.L.P. No.

12727 of 2014. This S.L.P. was filed against the Full Bench judgement dated 10th March, 2014 and the following order was passed:

“The Special leave petition is dismissed.”

From a perusal of the said order, we find that the applicants have inappropriately described the said order as a disposal of the S.L.P. whereas the fact is that the S.L.P. has been clearly dismissed. The S.L.P. was dismissed in the year 2014 itself and even otherwise, assuming that the S.L.P. was dismissed in limine and would not attract the principle of merger, yet the principle of finality gets attached inter parties insofar as the case of the present appellants is concerned.

On the second ground as raised by the learned counsel for the appellant relying on the judgment in the case of Chandeshwar Choudhary (supra), we would not comment upon the correctness or otherwise of the said judgement and the conclusions drawn inasmuch as this is a review application and, even otherwise, the said judgement of the learned Single Judge can be a matter of challenge before a higher Court of appeal. We are, therefore, not persuaded to adopt the same reasoning for extending any relief to the appellant, more so in the background aforesaid as we find that in the present case Instruction No.2 had been clearly violated. On the issue of disclosure of identity by a candidate contrary to the instructions of the examining body, the Apex Court in a three Judges’ decision in the case of Karnataka Public Service Commission and Others vs. B.M. Vijaya Shankar and Others reported in (1992) 2 SCC 206 examined a similar issue and came to the conclusion that no attempt should be made of identification by a candidate by writing his roll number anywhere in the answer-book in larger public interest and any violation of it should be visited strictly. It was held that if the direction was clear and explicit, the issue of bona fide and honest mistake does not arise. It was observed that incalculable harm could be caused and, accordingly, the judgment was directed to be applied to all other candidates who had appeared in the examination.

In our opinion as well such instructions to candidates appearing in the examination for not disclosing their identity in any form should be strictly observed for infusing discipline in competitive examinations. What is important in the ratio of the aforesaid judgment is extracted hereinunder:-

“More important than this is that provisions attempting to infuse discipline in

competitive examinations to be conducted by the

Commission cannot be construed with same yardstick as a provision in penal statutes.â??

The ratio of the aforesaid judgment is clearly attracted on the facts of the present case which judgment does not appear to have been noticed in the case of Chandeshwar Choudhary (supra). Thus, there is no error apparent on the face of the record so as to review the judgement dated 10th March, 2014.

Learned counsel then urged that an appropriate relief be granted as this would amount to denying a benefit at par with those who have been extended

the benefit, more so in the background that they had got an interim order during the pendency of the writ petition. We are not inclined to accept the

aforesaid argument for all the reasons already recorded hereinabove, but we provide as a measure of equity that in the event any payments have been

made to any of the appellants, then the same shall not be subjected to any recovery by the respondent State.

The review application stands consigned to records.