

SMT. JAYA DEVI
v.
THE STATE OF BIHAR AND ORS.

JANUARY 19, 1996

[MADAN MOHAN PUNCHHI AND K. VENKATASWAMI, JJ.]

Service Law :

Assistant teacher—Govt. directive—Termination of service—Writ Petition—Single Judge's to put back in service as it was not meant to apply to the particular individual—Another Teacher whose services were terminated approaching Court for similar relief—Same Single Judge dismissing the writ petition—Also withdrew the relief granted in the earlier case owning that his earlier order was not correct—Appointment cancelled—No notice given as hearing was given at the time of granting relief—Held; Order set aside as no specific notice was issued—Strong reservations expressed regarding the manner in which the earlier relief was withdrawn in distinct proceedings.

Practice & Procedure :

Relief granted in Writ petition—In a subsequent writ petition relief withdrawn—No specific notice issued—Strong reservations expressed regarding the Manner in which the relief was withdrawn.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2229 of 1996.

From the Judgment and Order dated 10.4.95 of the Patna High Court in C.W.J.C. No. 13173 of 1993.

K.D. Prasad for T.N. Singh for the Appellant.

B.B. Singh (for State) for the Respondent Nos. 1-5.

Manish Misra for N.S. Bisht for Respondent No. 7.

The following Order of the Court was delivered :

Leave granted.

Heard learned counsel.

The appellant herein, is Smt. Jaya Devi. It appears that her services as Assistant Teacher were terminated by the Directorate of Education, Bihar on February 19, 1990. She moved the High Court of Patna in Writ Petition being C.W.J.C. No. 1397 of 1990 which was allowed by S.N. Jha, J. sitting singly on November 28, 1991. It was deduced that the government directions to terminate services of Assistant Teachers were not meant to apply to the case of the appellant. She was thus put back to service. The 7th respondent herein, Shri Shyama Kant Jha approached the High Court in Writ Petition being C.W.J.C. No. 13173 of 1993 seeking similar relief as of the present appellant arraying the appellant as the 7th respondent therein, possibly for support of his case. It came up for hearing before the same learned Single Judge. The Learned Single Judge thought that he had wrongly granted relief to the appellant. He dismissed the Writ Petition of Shri Shyama Kant Jha and withdrew the relief granted to the appellant by specifically owning that his earlier order in the case of the appellant was not correct. Since the appellant had been reinstated pursuant to the orders of the learned Single Judge, he went to correct the detected mistake by ordering that her appointment be cancelled as no Further opportunity to her was necessary as she had been heard by him in the matter laid before him. For the period she had actually worked, the State was precluded by the learned Single Judge from recovering salary and allowances already paid to her. This order is under challenge in this appeal.

It is not denied that a judicial order passed by a court can be reviewed or re-called by the court after observing the legal procedure as by law devised permitting a review or a re-call. In the instant case, the High Court did not follow that procedure. Rather, in a totally distinct proceeding where the appellant was neither a necessary nor proper party, where no relief was claimed against her, she was caught and deprived of the benefit she derived in her Writ Petition. We are not, for the moment, commenting on the merit of the matter, but only to the method adopted by the learned Single Judge in nullifying his order in favour of the appellant in proceedings in which she had no interest at all.

Mr. B.B. Singh, learned counsel for the State of Bihar, on the strength of the two decisions of this Court in *Chandra Bansi Singh and Others etc. v. State of Bihar and others etc.* [1985] 1 SCR 579 (583) and *State*

of *Rajasthan v. Gurcharandas Chadha* [1980(1) SCC 250] goes to contend that if the High Court has corrected errors, even in exercise of powers which it did not have, then this Court should not cause any interference thereto in exercise of jurisdiction under Article 136 of the Constitution. As said before, we are not commenting on the merit of the matter, as to whether the order passed by the High Court in favour of the appellant in the first instance was correct or not. We have strong reservation in the manner in which the effect of the order was withdrawn in distinct proceedings. The appellant was not put to specific notice that the order in her favour was to be re-called for grounds stated. We cannot uphold such order of the High Court to the extent which affects the Appellant. We, therefore, allow this appeal, set aside the impugned order of the High Court to the extent it affects the appellant. The ill-effect of the same stands withdrawn in so far as the appellant is concerned. The appellant shall get her cost too.

Appeal allowed.