

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.538 of 2019

In
Civil Writ Jurisdiction Case No.6738 of 2016

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Minu Chaudhary W/o- Late Asoka Nand Chaudhary R/o- Village- Chauhta,
Ward.No.- 5, Dakshinbari Tole, P.O-Kamtaul, P.S.- Bisfi, Dist- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, Higher Education, Sri. R.K. Mahajan, Department of Human Resources Development, Govt. of Bihar, patna
2. The Secretary, Higher Education, Sri. Girbal Dayal Singh Department of Human Resources Development, Govt. of Bihar, patna
3. The Director, Higher Education Sri Girbal Dayal Singh, Department of Human Resources Development, govt. of Bihar, Patna
4. The Registrar, Col. Sri Nishit Kumar Rai, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
5. The Lalit Narayan Mithila University, Kameshwar nagar, Darbhanga Through Its Registrar Col. Sri Nishit Kumar Rai
6. Sri Surendra Kumar Singh, Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Nath Jha, Advocate
For the Opposite Party/s	:	Mr. Apurva Kumar, AC to GA-12
For the LNMU	:	Mr. Shailesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 09-09-2026

Heard the parties.

2. The present contempt petition has been filed for non-compliance of the order dated 18.07.2018 passed in C.W.J.C. No. 6738 of 2016, whereby the writ petition was allowed in view of the decision in C.W.J.C. No. 17670 of 2017 and it was directed that in terms of the decision in C.W.J.C. No. 17670 of 2017, the husband of the petitioner deserves absorption in terms of the



direction of the Hon'ble Apex Court in the case of Mahasangh Case (*supra*) reported in **(2005) 9 SCC 129 (State of Bihar & Ors. versus Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors)** and in view of the above, the action of the University reviewing the order of the absorption was declared to be a nullity. The respondents were directed to restore the husband of the petitioner in the status of absorbed teacher with all consequential benefits. Final decision was directed to be taken by the University within a period of four months, from the date of receipt/production of a copy of the order.

SUBMISSION ON BEHALF OF THE PETITIONER

3. The learned counsel for the petitioner submits that there was a direction to the respondents to restore the husband of the petitioner in the status of the absorbed teacher with all consequential benefits and therefore the order was clear that he was entitled for restoration of service and for payment of all the consequential benefits. He submits that a show cause has been filed by the University, wherein it has been stated that LPA No. 1556 of 2018 has been filed by the State and decision will be taken after the final orders to be passed by the Hon'ble Division Bench. Finally, the matter travelled to the Hon'ble Supreme Court of India, wherein the Hon'ble Supreme Court of India vide order dated 19.11.2025 passed in **SLP(C) No. 029618-029619 of 2024**



(the State of Bihar & others versus Akhilanand Singh & Ors.), disposed of the appeal preferred by the State, with certain directions to the State and to the University. He submits that since the appeal preferred by the State was disposed of by the Hon'ble Supreme Court of India, the University had no other option, but to absorb the services of the husband of the petitioner and to grant all consequential benefits to him. He submits that till date, the order dated 18.07.2018 passed in C.W.J.C. No. 6738 of 2016 has not been complied with by the respondents/opposite parties herein. He finally submits that a show cause, supplementary show cause as well as second supplementary show cause has been filed on behalf of the University, wherein vide order dated 19.06.2026 passed by the Vice Chancellor of the University has been brought on record. From perusal of the order dated 19.06.2026 passed by the Vice Chancellor, Lalit Narayan Mithila University, Darbhanga, it would transpire that after considering the orders passed by the Hon'ble Supreme Court of India on 19.11.2025 and after taking into account all the relevant facts, the claim of the petitioner has been rejected.

4. Per contra, the learned counsel for the University submits that the order under contempt has already been complied



with by the University inasmuch as that the claim of the husband of the petitioner has been rejected.

CONSIDERATION

5. Having considered the rival submissions and after going through the records, it appears that C.W.J.C. No. 6738 of 2016 was filed by the petitioner, with a prayer to absorb the services of her late husband from the date of his initial appointment. The writ petition filed by the petitioner was disposed of by a Hon'ble Single Judge of this Court vide order dated 18.07.2018, whereby the writ petition was allowed and it was directed that in view of the decision in C.W.J.C. No. 17670 of 2017, the husband of the petitioner deserves absorption in terms of the direction of the Apex Court in the case of ***Mahasangh*** (supra) and in view of the above, action of the University reviewing the order of absorption is hereby declared to be nullity. The respondents are directed to restore the husband of the petitioner in the status of absorbed teacher with all the consequential benefits. Final decision was to be taken by the University within a period of four months from the date of receipt/production of a copy of the order. It appears that ***C.W.J.C. No. 17670 of 2017 (Akhilanand Singh & Ors. versus the State of Bihar & Ors.)*** was filed for almost identical relief and the same was allowed vide order dated



17.06.2018 passed by a Hon'ble Single Judge of this Court. It appears from the records that the matter relates to the appointment of teaching/non-teaching employees of 4th phase College. The matter with regard to the absorption of the teaching/non-teaching employee of the 4th phase colleges travelled up-to the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India was pleased to constitute a one man enquiry committee, namely Hon'ble Justice S.C. Agrawal Committee. After submission of the report of by the Hon'ble Justice S.C. Agrawal Committee, the Hon'ble Supreme Court of India decided the matter and accepted the report of the Hon'ble Justice S.C. Agrawal Committee and the objections thereto was rejected, however the persons aggrieved were directed to approach the concerned High Court by filing their writ petitions. The orders passed by the Hon'ble Supreme Court of India in the case of *State of Bihar & Ors. versus Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.* is reported in (2005) 9 SCC 129. Subsequent thereto, the case of the late husband of the petitioner was considered by the University and his services was absorbed. Later on, the same was again terminated, therefore, the husband of the petitioner and other similarly situated teaching and non-teaching employees approached this Hon'ble Court by filing writ petitions. The matter again travelled up-to the Hon'ble



Supreme Court of India. The Hon'ble Supreme Court of India constituted a one man enquiry committee consisting of Hon'ble Justice S.B. Sinha. Hon'ble Justice S.B. Sinha committee considered the cases of the absorptions of all the teaching and non-teaching employees and favourable orders were passed in case of some teachers/employees. The Hon'ble Supreme Court of India again accepted the favourable report of Hon'ble Justice S.B. Sinha Committee and directed the aggrieved persons to approach before the concerned High Court. Being aggrieved with the non-inclusion of the name of the late husband of the petitioner, the petitioner preferred C.W.J.C. No. 6738 of 2016. Similarly situated teachers also preferred different writ petitions. Finally, a Hon'ble Single Judge of this Court vide his judgment dated 17.10.2018 passed in ***C.W.J.C. No. 17670 of 2017 (Akhilanand Singh & Ors. versus the State of Bihar & Ors.)*** allowed the writ petition and based on the same, the writ petition filed by the petitioner was also allowed. The State of Bihar being aggrieved with the orders passed in ***Akhilanand Singh*** (supra), preferred L.P.A. No. 1556 of 2018. The said LPA was heard along with its analogues cases and a Hon'ble Division Bench of this Court was pleased to dismiss the appeals preferred by the State of Bihar by order dated 26.09.2022. Being aggrieved with the order passed by the Hon'ble Division



Bench, the State of Bihar preferred ***Civil Review No. 54 of 2023***.

The said Civil Review was heard along with its analogues cases and a Hon'ble Division Bench of this Court vide its order dated 13.03.2024 was pleased to reject the review preferred by the State of Bihar. The State of Bihar preferred ***Special Leave to Appeal (C) No. 29618-29619 of 2024***. The appeal preferred by the State of Bihar was heard along with its analogues cases and the Hon'ble Supreme Court of India vide its order dated 19.11.2025 was pleased to take note of the orders passed by the Hon'ble Division Bench of this Court in L.P.A. No. 1117 of 2019 and the order passed by the Hon'ble Division Bench of this Court in L.P.A. No. 159 of 2021 and finally proceeded to record as under:-

“The order which is under challenge follows as under:-

“The present appeals are similar to that of LPA No.1117 of 2019 arising out of CWJC No. 15583 of 2018 decided on 25.07.2022.

Accordingly, the present appeals stands dismissed in terms of LPA No. 1117 of 2019 and connected matters.

*CWJC No. 18592 of 2017 is de-linked.
LPA No. 404 of 2019 is also de-linked.*

*Relist LPA No. 404 of 2019 for hearing
27.09.2022.”*



This was passed, placing reliance upon the following order passed in LPA No.1117/2019:-

“Heard Learned counsels for respective parties. Learned counsel for the appellants fairly submitted that the present appeal is covered by decision passed in LPA No.159 of 2021 arising out of CWJC No.15778 of 2018 decided on 11.07.2022.

In the light of the order dated 07.11.2022 passed in LPA No.159 of 2021, the present appeal stands dismissed.”

The aforesaid order was passed based upon the earlier order passed in LPA No.159/2021. The relevant portion is as under:-

“5. At this juncture learned counsel for the appellant submitted that an appeal has been preferred and it is numbered as L.P.A. No.1556 of 2018 and accepting consideration. Even assuming that in CWJC No.17670 of 2017 if there are any certain direction to the State, in that event the present appeal could be distinguished for the reasons that the learned Single Judge in the present matter has directed the 5th respondent to consider the grievance of the respondent – Sunita Mishra and there are no directions to the State.

6. In the light of these facts and circumstances both on the ground of



delay as well as maintainability of the present appeal by the State of Bihar, appeals stands dismissed.”

Thus, the petitioner(s) are not aggrieved, as of now. Though learned counsel appearing for the petitioners would submit that the Learned Single Judge has made some observations, the said observations will not have any binding effect on the petitioner(s).

In order to resolve the dispute, we only say that the University concerned is expected to consult the petitioner(s) before taking any decision, in accordance with law.

Accordingly, it is well open to the University to consult the petitioner(s) before taking a decision, in accordance with law.

Liberty is given to the petitioner(s) to challenge the same in the manner known to law, in case an order affecting the rights of the petitioner(s) is passed.

The Special Leave Petitions stand disposed of in the aforesaid terms.

6. From perusal of the order dated 19.11.2025 passed by the Hon’ble Supreme Court of India in SLA(C) No. 29618-29619 of 2024, it would transpire that the Hon’ble Supreme Court of India issued certain directions to the University authorities. The University authorities were directed to consult the State of Bihar before taking any decision in accordance with law and it was



further directed/observed that it is well open to the University to consult the State of Bihar before taking a decision in accordance with law. The liberty was granted to the State of Bihar to challenge the same in the manner known the law, in case of order affecting the right of the State of Bihar is passed.

7. In the considered opinion of this Court, since the appeal preferred by the State of Bihar was disposed of by the Hon'ble Supreme Court of India, giving certain directions to the University, therefore the orders passed by the Hon'ble Single Judge in C.W.J.C. No. 17670 of 2017 ***Akhilanand Singh*** (supra) and all other orders, including the order dated 18.07.2018 passed in C.W.J.C. No. 6738 of 2016 (writ petition filed by the petitioner) as well as the order dated 26.09.2022 passed in L.P.A. No. 1556 of 2018 and the order dated 13.03.2024 passed in Civil Review No. 54 of 2023, merged in the order dated 19.11.2025 passed by the Hon'ble Supreme Court of India in ***SLA(C) No. 29618-29619 of 2024***.

8. The law with regard to the doctrine of merger is required to be considered in the present case, before coming to the conclusion that whether the order passed by the Hon'ble Single Judge in the case of ***Akhilanand Singh & Ors.*** (supra) and the orders passed by the Hon'ble Division Bench of this Court in



L.P.A. No. 1556 of 2018 as well as Civil Review No. 54 of 2023 merged, in the order dated 19.11.2025 passed by the Hon'ble Supreme Court of India or not. For better appreciation of the doctrine of merger, this Court would refer to a judgment of the Hon'ble Supreme Court of India reported in **2000 (6) SCC 359 (Kunhayammed & Ors. versus State of Kerala & Anr.)**, wherein in paragraph no.44 it has been held as follows:-

“44. To sum up, our conclusions are:

- (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*
- (ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.*
- (iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or*



capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and



also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.ing been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

9. Further, the Hon’ble Supreme Court of India in a case reported in **(2011) 4 SCC 602 (Gangadhara Palo versus The**



Revenue Divisional Officer & Anr.), in paragraph nos. 5 to 9 has held as follows:-

“5. We regret, we cannot agree. In our opinion, it will make no difference whether the review petition was filed in the High Court before the dismissal of the special leave petition or after the dismissal of the special leave petition. The important question really is whether the judgment of the High Court has merged into the judgment of this Court by the doctrine of merger or not.

6. When this Court dismisses a special leave petition by giving some reasons, however meagre (it can be even of just one sentence), there will be a merger of the judgment of the High Court into the order of the Supreme Court dismissing the special leave petition. According to the doctrine of merger, the judgment of the lower court merges into the judgment of the higher court. Hence, if some reasons, however meagre, are given by this Court while dismissing the special leave petition, then by the doctrine of merger, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court. Hence, obviously, there can be no review of a judgment which does not even exist.

7. The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the



Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in Kunhayammed v. State of Kerala [(2000) 6 SCC 359] , S. Shanmugavel Nadar v. State of T.N. [(2002) 8 SCC 361 : JT (2002) 7 SC 568] , State of Manipur v. Thingujam Brojen Meetei [(1996) 9 SCC 29 : 1996 SCC (L&S) 1181 : AIR 1996 SC 2124] and U.P. SRTC v. Omaditya Verma [(2005) 4 SCC 424 : AIR 2005 SC 2250] .)

8. *A judgment which continues to exist can obviously be reviewed, though of course the scope of the review is limited to errors apparent on the face of the record but it*



cannot be said that the review petition is not maintainable at all.

9. *The learned counsel for the respondent Mr Sanjay Kapur has, however, invited our attention to para 4 of the judgment of this Court in K. Rajamouli [(2001) 5 SCC 37] , wherein it was observed: (SCC p. 41, para 4)*

“4. Following the decision in Kunhayammed [(2000) 6 SCC 359] we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm [Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386] that if the High Court allows the review petition filed after the special leave petition was dismissed after



condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the review petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, overrule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of special leave petition is maintainable.”

(emphasis supplied)

10. Similarly, a Hon’ble Division Bench of this Court vide its ***judgment dated 16.09.2016*** passed in ***Civil Review No. 04 of 2016 (Sri Rajesh Kumar versus Smt. Pushpa Rani)***, while considering the doctrine of merger, in paragraph nos. 10 to 13 has held as under:-

*“10. What the decision, in **Meghmala** (supra), thus, lays down that if review petition has been filed before the Special Leave Petition is filed and dismissed, the review petition still remains pending for consideration and deserves to be considered. However, if such an application for review was made after dismissal of the review petition, then, the process of filing of such a review application would amount to abuse of process of the Court and would, therefore, not be possible. The conclusion, so arrived at, in **Meghmala***



(supra), runs contrary to the law laid in **Kunhayammed** *(supra)*, wherein the Court has held that if the leave to appeal has not been granted at the very threshold without entering into the appellate jurisdiction, the doctrine of merger would not apply and, therefore, dismissal of the Special Leave Petition without assigning any reason would not subsume the order against which the Special Leave Petition was filed. Hence, in the light of decision, in **Kunhayammed** *(supra)*, notwithstanding the dismissal of a Special Leave Petition, review petition is still maintainable. The position of law, in this regard, has been summed up, at paragraph 44, in **Kunhayammed** *(supra)*, in the following words:

“44. To sum up, our conclusions are :

- (i) *Where an appeal or revision is provided against an decree passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.*
- (ii) *The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file*



an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the decree put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or decree appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

11. *There does exist a distinction between an appeal and a leave to apply for appeal. When an appeal is provided and the appeal is preferred, the appeal stands instituted; but when a leave for appeal is applied, then, until the leave is, in such a situation, granted, there is really no appeal. Hence, the disposal of the Special Leave Petition or of any petition for leave to appeal does not*



*subsume the order from which the appeal arose, for, with the rejection of the petition for leave, no appeal survived. Article 136 of the Constitution of India deals with 'special leave to appeal', which may be granted by the Supreme Court. When special leave to appeal is dismissed/disallowed by the Supreme Court with or without a speaking order, the order from which the appeal arose does not merge into such an order, for, as already indicated hereinabove, with the dismissal of the Special Leave Petition, no appeal survives and no appeal can be said to have been borne and considered. In fact, when the special leave to appeal is declined, there is no appeal. Hence, question of the merger of the order into the order declining to grant special leave to appeal would not, in the light of **Kunhayammed** (supra), arise at all.*

12. *In the light of what have been held in **Kunhayammed** (supra), the principles laid down there being three Judge Bench is still binding on us inasmuch as the reference, made to a larger Bench by the order passed by the three Judge Bench in **Khoday Distilleries Ltd.** (supra), has not laid down any law, as indicated above, and only referred the matter to a larger Bench. The decision, in **Meghmala** (supra), being a two Judge Bench, we are presently bound by the decision in **Kunhayammed** (supra), which lays down that if a Special Leave Petition is*



dismissed in limine without the appeal having come into existence, because of the leave having been declined, the doctrine of merger will not apply and, therefore, a petition for review of the order of the High Court remains open.

*13. Situated thus, we are clearly of the view that in the light of the decision in **Kunhayammed** (supra), this Court does have the power to review if a case for review is made out.”*

11. Even recently the Hon’ble Supreme Court of India in a case reported in **(2025) 3 SCC 543 (Balbir Singh and another versus Baldev Singh (dead) through his legal representatives & Ors.)**, in paragraph nos. 28 to 34, 49 & 50 has held as under:-

28. In Kunhayammed v. State of Kerala [Kunhayammed v. State of Kerala, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , while explaining the doctrine of merger, this Court held thus : (SCC p. 370, para 12)

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in



jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

29. *Further, while explaining the position that emerges on the grant of special leave to appeal by this Court [Kunhayammed v. State of Kerala, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , it was observed : (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] , SCC p. 383, para 41)*

“41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of



doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one.”

30. *This position of law has been affirmed and reiterated by a three-Judge Bench decision of this Court in Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd. [Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376]*

31. *The decision in Kunhayammed [Kunhayammed v. State of Kerala, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505] was followed by a three-Judge Bench decision of this Court in Chandi Prasad v. Jagdish Prasad [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724] , which held thus : (Chandi Prasad case [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724] , SCC p. 731, paras 23-24)*

“23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree



governing the same subject-matter at a given point of time.

24. *It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court.”*

32. *The decision in Chandi Prasad [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724] was followed by a two-Judge Bench of this Court in Shanthi v. T.D. Vishwanathan [Shanthi v. T.D. Vishwanathan, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787] , rendered on 24-10-2018 in the following terms : (Shanthi case [Shanthi v. T.D. Vishwanathan, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787] , SCC p. 421, para 7)*

“7. ... When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice



delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.”

33. Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree-holder to execute the decree of the second appellate court cannot be defeated.

34. The issue may be looked at from another perspective in terms of the provisions of Section 28 of the Act referred to earlier.

49. In CIT v. Amritlal Bhogilal & Co. [CIT v. Amritlal Bhogilal & Co., (1958) 34 ITR 130 : 1958 SCC OnLine SC 59] , this Court in para 10 observed as under : (SCC OnLine SC)

“10. There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the Tribunal, it is



obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone that subsists and is operative and capable of enforcement....”

50. *Thus, the Supreme Court merely reiterated the observation of the Bombay High Court in Tejaji Farasram [CIT v. Tejaji Farasram Kharawalla, (1953) 23 ITR 412 : 1953 SCC OnLine Bom 28 : AIR 1954 Bom 93] and stated that the hierarchy of courts and tribunals is to be maintained when the decision is reversed by the superior court and even when the superior court merely affirms the decision of the subordinate court."*

12. Having considered the law laid down by the Hon'ble Supreme Court of India as well as the Hon'ble Division bench of this Court with regard to the doctrine of merger, this Court is of the considered opinion that once the Hon'ble Supreme of India has passed an order, whereby the order passed by the Hon'ble Single Judge and the Hon'ble Division Bench of this Hon'ble Court has been considered and a direction has been issued to the University



to proceed in the terms directed by the Hon’ble Supreme Court of India in its order dated 19.11.2025 and the petition filed by the State of Bihar was converted into Special Leave to Appeal by the Hon’ble Supreme Court of India, the cause to sue before this Hon’ble Court no longer exists. Any order passed by the Hon’ble Single Judge or the Hon’ble Division Bench of this Court, merged in the orders passed by the Hon’ble Supreme Court of India on 19.11.2025 and therefore any contempt would lie before the Hon’ble Supreme Court of India. Accordingly, on the consideration made above, this Court is of the considered opinion that no contempt will lie before this Hon’ble Court.

13. Accordingly, the present contempt petition is dismissed.

14. Pending applications, if any, shall also stand disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	AFR
CAV DATE	31.07.2026
Uploading Date	09.09.2026
Transmission Date	NA

