

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13373 of 2012

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1. Sanjay Kumar Mandal Son Of Haripado Mandal Resident Of Village -
Kodwar, PS- Kahalgaon, District - Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Bhagalpur
3. The SDO, Kahalgaon, Bhagalpur
4. The Circle Officer, Kahalgaon, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh
Mr. Indeshwari Prasad Mandal, Advocates.
For the State : Mr. Gautam Bose Sr. Advocate AAG-8

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 08-12-2015 Heard both sides.

A counter affidavit has been filed on behalf of the respondents.

Petitioner is aggrieved by a communication dated 20.4.2012 (Annexure-9) issued by the Anchal Adhikari and addressed to the Teachers Appointment, Appellate Authority, Bhagalpur (for short 'the Tribunal'). It is not a communication addressed to the petitioner. By the said communication, the Circle Officer in response to a notice or an order passed by the Tribunal after making enquiry found that the caste certificate presented before the Tribunal (copy whereof is Annexure-8) issued on 23.3.2012 was found a forged document. It was accordingly

cancelled.

Few requisite facts providing the backdrop may be noticed: the petitioner claiming himself to be 'Dhanuk' by caste applied for appointment as Panchayat Shiksha Mitra (for short 'the PSM'). The post of PSM was contractual in nature. However, the said post was reserved for the applicants belonging to Extremely Backward Caste. On the strength of caste certificate showing him as the 'Dhanuk' (EBC) he got the appointment. The said post was later under the Rule provision converted into the post of Panchayat Teacher. Whoever was functioning as PSM on a particular day when the Rule was made in vogue was known as Panchayat Teacher (for short 'the P.T.') in a particular scale of pay. An issue with regard to his caste status came to the light when the Mukhiya of the concerned Gram Panchayat who is the appointing authority of the P.S.M. or P.T. issued notice to the petitioner on diverse occasions to satisfy about his caste status. No show cause was filed by the petitioner. In such circumstance, he was removed from the post of P.T./P.S.M.

A writ petition being CWJC No. 8923 of 2009 was filed by the petitioner. This Court, by a proceeding dated 19.08.2010, disposed of the same permitting the petitioner to raise the issue as raised therein before the Tribunal which was the

appellate authority. The order of removal from service was, however, stayed.

From the counter affidavit, filed by the State, it appears that the petitioner thereafter approached the Tribunal and an application was filed which is pending till today on the file of the Tribunal. It further appears from the pleadings on record that the Tribunal in course of hearing of the said matter directed an enquiry to be made by the Circle Officer and submit a report. In the light of the said order passed by the Tribunal, the impugned communication dated 20.04.2012 was issued which was addressed to the Tribunal. Obviously, the Tribunal has to consider the said report. The matter is pending before the Tribunal. The impugned communication has not been addressed to the petitioner. It clearly says that on an enquiry the caste certificate (Annexure-8) issued in favour of the petitioner was found forged. If it is so then only a declaration to this effect is to be made.

Mr. Singh, advocate for the petitioner, has contended that no notice was issued to the petitioner by the Circle Officer before passing the order cancelling the caste certificate. The said action of the Circle Officer is, therefore, violative of the Rules of natural justice. The counter affidavit does not specifically state about any notice having been issued to the petitioner by the

respondents before issuing the said communication.

Per contra, Mr. Bose, Sr. Advocate, has submitted that under the orders of the Tribunal the enquiry was made by the Circle Officer in which it was found as is apparent from bare perusal of the said communication dated 20.04.2012, that the caste certificate presented by the petitioner to claim the post was forged. If any document is forged there is no need of cancellation. He also submits that the entire matter is to be considered by the Tribunal in the light of the order of the Court. The petitioner can raise the issues which have been raised herein before the Tribunal for consideration and adjudication. Diverse facts have been brought to the notice of this Court through the counter affidavit which includes insertion of the alias name of the petitioner in the caste certificate on the strength of some affidavit affirmed by the father of the petitioner. This Court finds it difficult to examine these factual aspects of the matter. The petitioner shall have an ample opportunity to place all these issues of facts and law before the Tribunal for consideration. It has been stated at the Bar that the matter filed by the petitioner before the Tribunal is still pending consideration. It appears from perusal of the order dated 19.08.2010 passed in CWJC No. 8923 of 2009 (Annexure-7) that the order removing the petitioner from service has been stayed. In

effect, the petitioner was granted the relief. Instead of contesting the matter before the Tribunal the petitioner has now chosen to challenge the correctness/legality of a communication which has not been addressed or forwarded to the petitioner. It is, in fact, a report which has been submitted to the Tribunal for consideration.

Considering the above, I am not persuaded to invoke the extraordinary and discretionary writ jurisdiction in the present case to grant the relief as prayed for. The petitioner is, however, permitted to raise all issues of fact and law before the Tribunal in the pending matter filed by him under the orders of this Court.

(Kishore Kumar Mandal, J)

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