

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18458 of 2010

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Ajay Kumar Verma S/O Late Kapileshwar Prasad R/O Mohalla-
Mathizzirat, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran,
Motihari

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resource Development Department,
Government of Bihar, Patna
3. The Director, Secondary Education, Government of Bihar, Patna
4. The Regional Deputy Director Of Education Tirhut Division,
Muzaffarpur.
5. The District Education Officer, East Champaran, Motihari.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate.

For the State : Mr. Alok Ranjan, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL

ORAL JUDGMENT

Date: 22-01-2015

Heard Mr. Sunil Kumar Singh learned counsel for the
petitioner and AC to GA-13 for the State.

The petitioner was appointed as Clerk in Project Girls
High School, Turkaulia. His service came to be terminated along with
others vide order dated 26.02.2005 passed by the District Education
Officer, East Champaran, Motihari (Annexure-1). Along with the
petitioner the services of one Prabhat Kumar Gupta who was
similarly appointed as Clerk was also terminated. Counsel for the
petitioner took a stand that the impugned order by which Prabhat
Kumar Gupta was also terminated was the subject matter of
consideration in C.W.J.C. No. 1509 of 2006. This Court by order

dated 01.04.2011 set aside the order in so far as the petitioner of the case is concerned and directed for his reinstatement with all consequential benefits.

The contention of the petitioner is that the case of the petitioner is similarly situate inasmuch the impugned order in respect of one of the aggrieved person has already been quashed by this Court. It has, thus, been submitted that the application merits to be allowed and the impugned order be quashed. The matter was considered on 05.01.2015 and on the request of the counsel for the State the copy of the order passed in C.W.J.C. No. 1509 of 2006 was made over to him and the case was adjourned enabling him to go through the judgment and take a stand before this Court.

Learned counsel for the State, on going through the order dated 01.04.2011 passed in C.W.J.C. No. 1509 of 2006 fairly states that the case of the petitioner stands on identical/similar footing save and except that there has been delay of nearly five years in approaching the Court. In the case of Prabhat Kumar Gupta (supra), the writ application was filed in the year 2006 wherein this Court passed the said order.

In Prabhat Kumar Gupta (supra) this Court considered in great detail the factual matrix of the case in the light of the stand taken by the respondent State. This Court would extract for better appreciation the relevant part of the order passed in C.W.J.C. No. 1509 of 2006:-

“The stand of the State in the counter



affidavit is that the petitioner was posted in Project School by the RDDE who had no authority in respect thereof and, as such, petitioner's appointment was bad. On straight query by this Court as to whether State challenged the authority of the RDDE to issue the Gazette Notification, the answer was no. As to the creation of panel consequent to selection, was there any illegality, the answer was no. As to the final selection of the 39 persons on the merit list whether there was any illegality, the answer is no. The illegality starts when it goes to posting after selection. The plea of the State is that Project Schools being in the District Cadre, RDDE, who was the controlling authority for Divisional cadre, he could not have posted people in the District Cadre, on the face of it, in my view, the objection of the State is not to selection and/or appointment but to posting. It is well known that selection, appointment and posting are three different stages and three different concepts. A wrong posting cannot invalidate selection or appointment. A wrong appointment can invalidate posting but cannot invalidate selection. A wrong selection would invalidate all.

Now one more aspect needs to be taken care of. It appears, as noted above, the petitioner and one Ajay Kumar Roy had moved this Court for their salary which writ petition was disposed of, as noted above, with also a direction to the State to provide suitable posting to remove the confusion in future. Pursuant thereto, petitioner was not touched. He continued in the Project School but Ajay Kumar Roy was posted in the office of the District Superintendent of Education. Again, a dispute arose as to which cadre he belongs to. The said Ajay Kumar Roy came to this Court in CWJC No 5746 of 2000 disposed of on 05.01.2004 wherein this Court held him to be appointee in the Project School and, as such, in the District Cadre. The said Ajay Kumar Roy preferred Letters Patent Appeal against the said judgment being *LPA No 455 of 2004* which was disposed of on 01.07.2004. This Court remitted the matter to the Secretary, Department of Human Resources (Secondary Education) to decide the matter about cadre of the said Ajay Kumar Roy and others. The decision of the Secretary dated 10.05.2005 has been brought on

record as Annexure-21 which is not disputed by the respondents. The decision clearly is that the petitioners were appointees in the Divisional Cadre and not District Cadre.”



Having held so and relying on the judgment passed by the Apex Court in the case of **All India Groundnut Syndicate Limited v. Commissioner of Income Tax, Bombay City**, [AIR 1954 Bombay 232] set aside the impugned order with consequential benefits. The contention of the State is that there has been delay in approaching this Court for the relief(s). Counsel for the petitioner has contended that if a relief has been granted to one of the similarly placed persons, the same cannot be refused to the petitioner on the ground of delay, particularly, when from the statements made in the writ application it is evident that he had been pursuing the remedy before the concerned Authority. In this connection, he has also drawn attention of the Court to the order passed by the Secretary, Human Resource Development Department, Government of Bihar (Annexure-10) passed on 28.12.2005 wherein on an application preferred by one of the aggrieved person, namely, Arvind Kumar Singh the operation of the impugned order in so far as the applicant of the said representation/appeal was stayed.

Having considered the submissions made at Bar I am of the view that since the relief has been granted to the one of the similarly placed person by this Court, the same cannot be denied to the petitioner who admittedly stand on the similar/identical footing.

The fallacy in the reasoning(s) assigned by the respondent in terminating their services have been considered and negated by this Court in C.W.J.C. No. 1509 of 2006. The impugned order, in so far as the petitioner is concerned, therefore, merits to be interfered with and set aside. I order accordingly.

As about the consequential benefits to be given to the petitioner pursuant to the quashment of the impugned order, this Court instead of directing for payment thereof from the date of termination till the passing of the present order would leave it to the discretion of the Authority to consider as to whether the petitioner would be entitled to full monetary benefits either from the date of passing of the termination order and/or from any posterior date. The respondent no.3 will take a decision in this regard on an application filed in this regard within two months from the date of filing of application alongwith copy of this order. However, it is made clear that the period the petitioner remained out of job shall be deemed to be in the service of the State for the purpose of other benefits such as increment/pension etc.

(Kishore Kumar Mandal, J)

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