

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10598 of 2015

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Anirudh Singh, son of late Dhyani Singh, resident of Village Kamlabari, Dhauni Tola, P.S. Jainagar, Dist. Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Department of Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
4. The District Education Officer, Madhubani.
5. The District Program Officer (Establishment), Office of the District Education Officer, Madhubani.
6. The Block Education Officer, Jainagar, Dist. Madhubani.
7. The Block Education Officer, Benipatti, Dist. Madhubani.
8. Sri Satyendra Kumar, S/o Sukal Sah, Assistant Teacher, Kanya Middle School, Rungta, Block Jainagar, Dist. Madhubani and R/o Dwarika Campus, Opp. To Ambey Hotel, Ward No.8, P.O. & P.S. Jainagar, Dist. Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Adv.

For the Respondent/s : Mr. Madhuresh Prasad, GP12

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 22-07-2015

Heard learned counsel for the parties.

Having regard to the challenge of the petitioner to the order dated 5.6.2015 passed by the Regional Deputy Director of Education, Darbhanga allowing the appeal of the respondent no.8 and also directing for his posting in the same school where he was posted earlier and had earned his promotion on the Graduate Trained Teacher, this Court would not like to interfere in the matter because at the end of the day the respondent no.8 was never held guilty nor punished in the departmental proceeding and the period order of

suspension was treated to be on duty by way of allowing him to draw his full salary for the period of suspension.

In such a situation, the District Education Officer while cancelling the promotion of Respondent no. 8 vide his order dated 16.03.2015 had committed an error in modifying the earlier order in favour of the respondent no.8 dated 2.8.2013 by which he was extended payment of full salary for the period of suspension. Rule 97 of the Bihar Service Code makes it clear that in the event of exoneration from the charge that a person becomes entitled for full payment of salary because in that case suspension order itself becomes unjustified. The finding in this regard of the appellate authority is that there was no evidence to support the charge and, in fact, even the order of warning not a punishment prescribed in the Disciplinary Rules was unjustified.

Be that as it may, the matter had rested on the order dated 2.8.2013 by way of recording only a warning against Respondent no. 8. The District Education Officer therefore had no business, he being not an appellate authority, to revise/review such an order dated 2.8.2013 and thus the consequential order of cancelling promotion of the Respondent no. 8 and directing him to remain as a Matric Trained Teacher was also equally bad on fact and in law. Such an order of the District Education Officer, if that has been set aside by the Appellate

Authority, though not very happily worded the same cannot be interfered by this Court as the conclusion arrived by him does not suffer from any error.

As a matter of fact, learned counsel for the petitioner also submits that the petitioner has little concern with the revocation of the order of punishment of Respondent no. 8 passed by the District Education Officer on 5.2.2015 but his grievance is that as the respondent no.8 was sought to be restored to his school by the impugned appellate order of R.D.D.E, he ought to have been heard and his plea of working in the school should have been considered. It has been stated that the petitioner had religiously complied the order of his transfer dated 3.9.2012 but now in view of the appellate order, it is he who has received the marching order without any fault on his part and that too without his destination being fixed, inasmuch as, the Regional Deputy Director of Education had only passed an order for giving an appropriate posting to the petitioner.

In the considered opinion of this Court, the moment learned counsel for the petitioner concedes that the petitioner is not concerned with the first part of the appellate order of R.D.D.E. in favour of Respondent no. 8 meaning thereby he has not assailed that part of the order, its consequence had to be also faced by the petitioner. There cannot be two persons on one post as the respondent



no.8 was earlier working in the school. It is the government policy that in the event of promotion of a teacher in the graduate trained pay-scale, if a person is working in that very school and earns promotion where there is a vacant post it is he who has to be posted against such a part.

In that view of the matter, if the order of promotion of the respondent no.8 dated 3.9.2012 and his posting had ultimately remained untouched, he was bound to be reverted back to his own school as a result whereof, the petitioner would become the surplus on account of two persons holding the same post. It is this aspect of the matter which will compel this Court now not to interfere even with the second part of appellate order.

That being so, this application fails and is, accordingly, dismissed.

Nothing said in this order shall come in the way of the petitioner in approaching the authority for his posting at an appropriate place and, if he does so, the Committee, headed by the District Education Officer, shall pass an order of posting of the petitioner within a period of one month from the date of receipt of this order.

It is, however, made clear that since the petitioner has been relieved only on 24.6.2015 from the school of respondent no.8, his

payment of salary shall not be denied if the petitioner would join at an assigned place of posting within a period of fifteen days from the order to be passed by the District Education Officer.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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