

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3497 of 2011

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Vishal Kumar S/O Panna Lal Gupta Permanent Resident of Mohalla Chak Baria,
P.O. Baria, P.S. Gopalpur, District Patna. presently posted as Clerk in Nationalised
Smt. Girija Kuer, High School, Masaurhi, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Human Resources Development
Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna, through
Secretary.
3. The District Magistrate, Patna.
4. The District Education Officer, Patna.
5. The Headmaster, Nationalised Smt. Girija Kuer, High School, Masaurhi, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr. Nivedita Nirvikar GA 10

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-12-2015

Heard Sri Binod Kumar Singh, learned counsel for the
petitioner and Smt. Nivedita Nirvikar, learned Govt. Advocate 10.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has prayed for
quashing of an office order contained in Memo No. 563 dated
12-02-2011 issued under the signature of District Education Officer,
Patna (**Annexure – 1** to the writ petition). By the said order, the
petitioner's appointment, as Class III post, has been cancelled and the
petitioner has been reverted to Class IV post, as Peon, at Nationalised
High School, Tope, Patna.



Short fact of the case is that the petitioner's mother was a government servant, as teacher, who died while in service on 13-10-2007. After the death, the petitioner applied for being appointed on compassionate ground. Finally, the case of petitioner alongwith others was considered by the District Compassionate Appointment Committee and name of twenty persons including the petitioner was recommended for being appointed. The petitioner's case was recommended for being appointed against Class III post. The decision was taken by the District Compassionate Committee under the Chairmanship of the District Magistrate-cum-Chairman of the Committee in the meeting dated 30-05-2008. Thereafter, by order contained in Memo No. 4521 dated 12-08-2008 (**Annexure 2** to the writ petition), the petitioner was appointed as Clerk and thereafter, the petitioner joined on 19-08-2008. After joining while he was discharging his duties as Class III employee, the petitioner was asked to explain regarding his appointment on 29-01-2011. Thereafter, the petitioner requested for providing certain documents, however; the impugned order was passed on 12-02-2011, whereby the petitioner has been reverted from Class III post to Class IV post.

Sri Singh, learned counsel for the petitioner, while assailing the impugned order, submits that once the petitioner was appointed in regular manner against Class III post, the respondents



were not at all authorized to revert the petitioner without following the procedure, particularly in violation of Article 311 of the Constitution of India. He further submits that without any departmental enquiry, the said order has been passed, which is liable to be set aside. He further submits that the petitioner being qualified after the death of his mother had applied for appointment on compassionate ground, in terms of policy of the State Government, which was considered in detail by the District Compassionate Appointment Committee and only thereafter, the petitioner was issued appointment letter and he joined and he started functioning since 2008. After lapse of several years in 2011, the impugned order has been passed, which is liable to be set aside.

Smt. Nivedita Nirvikar, learned Govt. Advocate – 10 has vehemently opposed the prayer of the petitioner. She submits that the District Compassionate Committee had considered the case of about 41 persons for being appointed on compassionate ground, however; names of 20 persons were recommended for being appointed. By way of referring to **Annexure – A** to the counter affidavit, she submits that the persons, who were having higher qualification than the petitioner, such as M.A. & other qualification, save and except petitioner, all others were appointed against Class IV post, whereas, the petitioner was only Matriculate. She further submits that the appointment of the



petitioner against Class III post was done due to inadvertence in the office and as such, only error has been removed, which was committed by the office, that too while considering the cases of such appointment, in view of order passed by this Court in a writ petition. She further submits that even before passing the impugned order, the petitioner was given opportunity to explain, which was not explained and only thereafter, the impugned order has been passed.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Prima facie, on going through the impugned order, the Court is satisfied that it is illegal and same is liable to be set aside. Once the petitioner was regularly appointed against Class III post and he started discharging duty, subsequently, in absence of any allegation of fraud or misrepresentation made by the petitioner, the petitioner would not have been reverted without following the procedure as well as violating the principle as laid down under Article 311 of the Constitution of India. Learned State counsel had tried to persuade the Court that opportunity was given to the petitioner by **Annexure B** to the counter affidavit filed on behalf of respondent no. 4. On perusal of **Annexure B** to the counter affidavit, the Court is satisfied that it was not in accordance with the principle of departmental proceeding. Moreover, pursuant to **Annexure B**, whereby the petitioner was asked



to explain, the petitioner, vide **Annexure B/1** to the counter affidavit, had requested the authority concerned i.e. District Education Officer, Patna to provide certain documents for ensuring appropriate reply. The petitioner had requested the District Education Officer, vide his letter dated 04-02-2011, however, the order impugned was passed only on 12-02-2011. Meaning thereby, that inference can be drawn that no proper opportunity has been provided to the petitioner. Even in a departmental proceeding, minimum requirement is to provide opportunity of hearing and providing documents on which the department proposes to initiate proceeding.

In view of **Annexure B** and **B/1** to the counter affidavit, the Court is satisfied that order impugned has been passed without following any procedure.

In the present writ petition, on 10-03-2011 itself, while granting time to the State for filing counter affidavit, this Court had directed *not to disturb the petitioner, in view of Annexure – 1 to the writ petition* and thereafter, in paragraph – 7 of the counter affidavit, it has categorically been stated that in compliance with the order dated 10-03-2011, operation of official order contained in Memo no. 563 dated 12-02-2011, which has been impugned in the present writ petition, has been stopped.

Accordingly, the order impugned i.e. order contained in

Memo no. 563 dated 12-02-2011 passed by the District Education Officer, Patna is, hereby, set aside.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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