

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2079 of 2014

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Pramod Kumar, S/O Shri Rameshwar Prasad R/O Mohalla- Near Shankar Takies, Deep Nagar, P.S. Adampur, District Bhagalpur at present working as Trained Science Graduate Teacher Dagarnath Middle School, Naya Bazar, Nagar Nigam, Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Department, Government of Bihar, Patna
2. The Principal Secretary Human Resources Development Department, Government of Bihar, Patna
3. The Director Primary Education, Bihar Patna
4. The District Education Establishment Committee Bhagalpur, District- Bhagalpur Through Its Chairman District Education Officer Bhagalpur, District- Bhagalpur
5. The Regional Deputy Director of Education, Bhagalpur Division, District- Bhagalpur
6. The District Education Officer Bhagalpur, District Bhagalpur
7. The District Programme Officer (Establishment), Bhagalpur District Bhagalpur
8. Sri Rana Kumar Jha S/O Late Nishi Kant Jha Residence of Village- Chakrami, P.O.- Narayanpur, P.S.- Bhawanipur, District Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.S.D.Mishra, Advocate.
For the State : Mr. Prabhu Narayan Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 14-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

"1. That this writ application is being filed for issuance of



writ in the nature of certiorari for quashing memo no. 08 dated 03.01.2014 by which alleged that posting of the petitioner in Jagarnath Middle School, Naya Bazar, Nagar Nigam, Bhagalpur, is illegal on the ground there is no section post of science graduate post I the school as per the report submitted by D.P.O.(Establishment) by which alleged that only 14 schools having sanction post in the District of Bhagalpur, which contrary to a list of the Graduate Science post which was submitted under Right of Information Act by letter dt. 20.07.13 by D.P.O. (Establishment), on the vacant and sanction post of Science graduate in the school, hence, petitioner posted as Science Graduate teacher, soon after promotion by the District Establishment Committee vide letter memo no. 3864 dated 31.12.12."

3. Mr. Sarda Nand Mishra, learned counsel for the petitioner, in support of the aforementioned prayer, had submitted that once the petitioner's transfer was earlier made on promoted post of Graduate Science Teacher at Middle School Belsira, Block- Nathnagar, the subsequent order dated 03.01.2014 passed by the Regional Deputy Director of Education, Bhagalpur Division, transferring the petitioner at Jagarnath Middle School, Naya Bazar, Nagar Niga, Bhagal on the ground that there being no sanctioned post of Graduate Science Teacher, will be wholly bad on facts and in law.

4. Learned counsel for the petitioner has also made submission as with regard to an order of this Court dated 06.08.2013 passed in the case of Rana Kumar Jha in C.W.J.C. No.

14799 of 2013 (respondent no. 8 herein) to contend that as a matter of fact this Court had found the petitioner fit to continue on the post of acting Headmaster because of his (petitioner) being the senior most graduate trained teacher.

5. In the considered opinion of this Court, whatever has been stated by the respondents in the counter affidavit will itself make out a case that the petitioner on promotion could not have been retained in Jagarnath Middle School, Naya Bazar. It is true that before promotion, the petitioner was working at Jagarnath Middle School, Naya Bazar, but then as there was no sanctioned post of Graduate Science Teacher available for him, the District Promotion Committee, by its decision dated 31.12.2012, had sought to post him Middle School Belsira, Block- Nathnagar while promoting him on the post of Graduate Trained Teacher in Science. That order was however sought to be changed by the District Education Officer, Bhagalpur, vide his subsequent order dated 10.01.2013, whereby the petitioner was curiously sought to be posted on a non-existing post of Graduate Trained Teacher in Jagarnath Middle School, Naya Bazar. This became the subject matter of contention before the appellate authority, namely, Regional Deputy Director of Education, Bhagalpur, who under

Promotion Rules, 2011, has been vested with power of appeal against the decision of the District Education Officer and its Committee as with regard to promotion and consequential posting.

6. It is the finding of the appellate authority that as there is no sanctioned post of Graduate Science Teacher in Jagarnath Middle School, Naya Bazar and, therefore, the posting of the petitioner, on promotion, on the post of Graduate Science Teacher could not have been made in Jagarnath Middle School, Naya Bazar. This Court does not find any error in such appellate order passed by the Regional Deputy Director of Education, Bhagalpur dated 03.01.2014.

7. The only submission of learned counsel for the petitioner while assailing the order of the Regional Deputy Director of Education, Bhagalpur that a document dated 20.07.2013 was made available to one Aswani Kumar under Right to Information Act, and that would go to show that there were 94 schools Jagganath Middle School Naya Bazar were having the post of Graduate Science Teacher, is neither here nor there. This document obtained under Right to Information Act by Mr. Aswani Kumar firstly, without looking into as to what was the query and information sought by him, will have no relevance specially when



the document does not talk specifically of sectioned post of Science teacher in the middle school. A compilation of 94 schools of the post of Graduate Science Teacher can never be treated to be an authentic document specially when the respondents have in their counter affidavit not only specifically raised a plea to contrary but also placed on record the list of 14 schools where the post of Science Teacher was sanctioned by the Government with specific letter no. and date of such sanction of each post of Graduate Science Teacher has been mentioned therein. This Court, therefore, will have no difficulty in rejecting the submission of the learned counsel for the petitioner as with regard to the alleged error in the appellate order of R.D.D.E., Bhagalpur

8. Thus, if the petitioner was working on a post of matric trained teacher in Jagarnath Middle School, Naya Bazar and eventually got promoted, as per the seniority for the sanctioned post of Graduate Science teacher, he had to be posted out of school because there was no place for him in his earlier school namely, Jagarnath Middle School, Naya Bazar. That in fact was initially also done while promoting and posting him in Middle School Belsira but then that was subsequently changed by the District Education Officer which eventually was found to be bad

by the appellate authority in the impugned order.

9. That being so, this Court would find no reason to interfere in the impugned order and consequently, this writ application fails and is hereby dismissed.

10. At this stage, Mr. Sarda Nand Mishra, learned counsel for the petitioner has drawn attention of this Court that consequent upon the order of the Regional Deputy Director of Education, as contained in Annexure-7, the petitioner's earlier joining on the post at Middle School Belsira, Block- Nathnagar was refused and therefore he has the apprehension that he will be left without any post. This Court would also find no merit in such submission inasmuch as this is a mere oral submission without there being any averment in the writ petition much less supported by any authentic documentary evidence. Thus petitioner in fact was supposed to report in Middle School Belsira immediately after 3.1.2014 when the impugned appellate order was passed because this court had never stayed operation of such order and therefore the petitioner must report for duty forthwith at Middle School, Belsira forthwith. It is however made clear that in the event, such post of Graduate Science Teacher has been filled in the Middle School Belsira, it will be open for the Committee headed by

District Education Officer, Bhagalpur to pass fresh order of posting of the petitioner at any appropriate place where the post of Graduate Science Teacher may be vacant.

11. In the result this application fails and is accordingly dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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