

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15314 of 2015

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Ram Babu Sada, Son of Sri Rajendra Sada @ Sri Rajendra Sadai, resident of Village & Post Office- Garaul, Police Station- Bahera, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Human Resources Development Department (Primary Education), Government of Bihar, Patna.
4. The Collector, Darbhanga.
5. The District Education Officer, District- Darbhanga.
6. The District Program Officer (Establishment), Education, Darbhanga.
7. The Block Development Officer, Ali Nagar Block, District- Darbhanga.
8. The Block Education Officer, Ali Nagar Block, District- Darbhanga.
9. The Panchayat Secretary, Gram Panchayat Raj, Nawanagar Narma, Ali Nagar Block, District- Darbhanga.
10. The Mukhiya, Gram Panchayat Raj, Nawanagar Narma, Ali Nagar Block, District- Darbhanga.
11. The Head Master, Primary School, Nawanagar Dhakshin, Panchayat Nawanagar Narma, Ali Nagar Block, District- Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Ravi
For the Respondent/s : Mr. SC31- P.S. Sahay

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 15-10-2015 Heard learned counsel for the parties.

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

“(i) For quashing the impugned letter vide memo no.1107 dated 31.7.2015 whereby and whereunder the respondent no.7 has been directed to the respondent no.9 i.e. Panchayat Secretary that the services of all appointed teachers including the petitioner have automatically been ended in view of order dated 3.7.2015 passed by the



learned Additional District and Sessions Judge II, Benipur, Darbhanga in Title Appeal No. 1/2009 arising out of judgment and order dated 5.12.2008 and decree dated 12.12.2008 passed by the learned Sub Judge I, Benipur Sub-division under the district of Darbhanga.

The respondent no.7 has further directed to the respondent no.9 that services of the teachers including the petitioner work not to be taken as well as honorarium (Manday) whatsoever not to be paid till the further order of the Hon'ble High Court as contained in Annexure 6 to this writ application.

(ii) The petitioner further prays to reinstate in his service and restrained the respondents not to disturb in the service.

(iii) For commanding the respondents to make the regular payment of honorarium to the petitioner.”

3. As a matter of fact while considering the aforementioned prayer this Court had the occasion to go through the records as presented by the petitioner alongwith the writ petition. This Court having perused them in its order dated 1.10.2015 had recorded as follows:

“2. A peculiar position has emerged in this case. The petitioner and others were aspirants for the post of Panchayat Teacher. As a matter of fact, in all 20 posts of Panchayat Teacher were to be filled up in Gram Panchayat Raj- Narma Nawanagar in the district of Darbhanga. The process of appointment, by way of advertisement for filling up these 20 posts of Panchayat

Teacher, had been initiated some time in the year 2006.

3. According to learned counsel for the petitioner, the process of counselling had been undertaken, but before appointment could be made on the basis of such counselling, the Collector of the District had directed for conducting fresh counselling. As against this decision of the Collector, which was communicated by the District Education Officer, a title suit was filed being Title Suit No. 107 of 2007, which, despite an objection with regard to maintainability of the suit on account of Rule 18 of the Bihar Panchayat Elementary Teacher (Appointment & Service Conditions) Rule, 2006, was decreed by Sub Judge I, Benipur on 5.12.2008.

4. Thereafter an appeal was filed against the aforesaid judgment and decree, being Title Appeal No. 01 of 2009, and while this appeal was pending before the Additional District Judge-2, Benipur, the petitioner and others, 20 in all, had filed a complaint before the District Teachers Employment Appellate Authority, Darbhanga being Case No. 100 of 2011 seeking a direction for their appointment on the post of Panchayat Teacher by placing reliance on the judgment and decree of the Sub Judge I, Benipur. The Tribunal, by its order dated 25.9.2012, had directed to appoint the petitioner and 19 others. Whereafter the petitioner and others were also appointed either in the month of September 2012 or in November, 2012 inasmuch as the signature of the person to take appointment letter is dated 28.9.2012 or the date of issuance, after cutting the date of 28.9.2012, has been

made as 28.11.2012. In fact, there is a similar cutting with regard to date of joining of the petitioner wherein the date of December 2012 has been again sought to be changed to 29.11.2012.

5. Be that as it may, the petitioner and others had continued to work on the post of Panchayat Teacher but then pending appeal against the judgment and decree of the Sub Judge I was allowed on 3.7.2015 and the decree passed by the Sub Judge I was set aside on the ground of jurisdiction.

6. It is an admitted position that the aforesaid judgment and decree of the appellate court dated 3.7.2015 in Title Appeal No. 1 of 2009 has become final and binding on account of no further appeal being carried to this Court.

7. The impugned order in fact has been passed on 31.7.2015 wherein the Block Development Officer, Alinagar has directed the Panchayat Sachiv of Narma Nawanagar Gram Panchayat not to take any work from the petitioner and others who were appointed on the basis of decree of the Sub judge I in Title Suit No. 107 of 2007. There is no consequential order brought on record by the petitioner that Panchayat Sachiv of Narma Nawanagar Gram Panchayat has complied the order of Block Development Officer, Alinagar but then this writ application has been filed for quashing of the aforementioned order of the Block Development Officer, Alinagar dated 31.7.2015.

8. The peculiarity that this Court had noticed in the beginning is on account of these catch 22 situations



created by the Sub Judge I and the District Teacher Employment Appellate Authority. Had the Tribunal arrived at its independent finding as with regard to preparation of draft merit list, its publication and inviting objection, followed by preparation of final merit list and then a transparent mode of counseling by informing all the persons including in the merit list, the appointment of the petitioner and 19 others could not have been put under cloud. This Court however finds that the order of the Tribunal directing appointment of the petitioner and 19 others is based on the decree of the Civil Court which, as noted above, has already been set aside by the appellate court.

9. In such a situation, this Court would direct the Collector of Darbhanga District, the Block Development Officer, Alinagar Block and the Panchayat Sachiv of Narma Nawanagar Gram Panchayat to produce the entire records of the selection process undertaken in the year 2006 for filling up 20 posts of Panchayat Teachers in question. Both the Block Development Officer and the Panchayat Sachiv shall also remain personally present in course of hearing along with the records on the next date in the Court.”

4. Today when this case has been taken two things have become absolutely clear that there is no document to show the compliance of Rule 9 of the Bihar Panchayat Teacher Appointment Rules which gives stepwise action to be taken for filling up the post of Panchayat Teacher. This Court has not been



provided with a draft merit list which is to be prepared after submission of the application. The Panchayat Secretary, who is present before the Court says that he was not in office when the appointment was sought to be made in the year 2006-07 and that he does not have any record to substantiate preparation of draft merit list, inviting of the objections followed by preparation of final merit list. Before this Court a so called counselling register is also sought to be produced. On perusal of the same it becomes very clear that on 10.10.2006, 11.10.2006, 12.10.2006, 13.10.2006, 19.10.2006, 3.11.2006 and 4.11.2006 certain candidates had appeared before the Panchayat Secretary, namely, Md. Shivlee. Apparently this register will not inspire any confidence, especially when it does not contain the signature of the members Selection Committee as constituted under Rule 9 of the Rules. In any event this cannot be the documentary evidence of counselling which, as noted in Rule 9(xi) which is the last step at the stage of offering of the appointment letter pursuant to the preparation of final merit list. In that view of the matter, this Court must hold that whatever was done in the name of appointment of Panchayat Teachers in Gram Panchayat Raj, Navanagar is not supported by any documentary evidence.



5. As has been noted this case has taken a circuitous route in the sense that somehow the Sub Judge, Benipur had illegally interfered in the matter which ofcourse has been set at rest by the appellate order of the District Judge, Darbhanga. Thus, while this Court would find it difficult to interfere with the order of termination of service of the petitioner but then as the petitioner has still sought to establish his case that his appointment was made in pursuance of selection procedure undertaken in the year 2006-07 and that remedy for him under 2006 Rules was to move before the competent District Teachers Employment Appellate Authority, it would not like to close the doors for the petitioner forever.

6. Learned counsel for the petitioner infact has prayed to withdraw this writ application with a liberty to the petitioner to move the competent District Teachers Employment Appellate Authority (hereinafter referred to as the Tribunal).

7. This application is, accordingly, permitted to be withdrawn with the aforementioned liberty.

8. Since this Court has not found any prima facie case in favour of the petitioner giving semblance of selection and appointment in terms of the Rules it however cannot allow the prayer of the learned counsel for the petitioner to allow the petitioner to continue in service till adjudication by the Tribunal.

9. Before parting with it is however made clear that it would be for the competent Tribunal to examine all aspects of the matter without being influenced by the earlier findings recorded by the Civil Court which, as noted above, infact had no jurisdiction in the matter. In the event the petitioner would move the Tribunal, the Panchayat Secretary shall produce all the concerned records available with him as also render all possible assistance to the Tribunal in coming to its conclusion regarding validity of selection and appointment of the petitioner.

10. Personal appearance of Mr. Vijay Kumar Saurav, B.D.O., Alinagar and Mr. Ramesh Chandra Jha, Panchayat Sachiv, is dispensed with.

(Mihir Kumar Jha, J)

surendra/-

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