

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.992 of 2012in

in

Civil Writ Jurisdiction Case No. 20493 of 2010

=====

Sunil Kumar S/O Sri Ram Snehi Thakur, resident of Village- Baghari, P.O.-
Baghari, P.S.- Sursand, District- Sitamarhi Appellant

Versus

1. The State of Bihar through the Commissioner-cum-Secretary Department of Education, Government of Bihar, Patna
 2. The Director, Department of Primary Education, Government of Bihar, New Secretariat, Bihar, Patna
 3. The District Magistrate, Sitamarhi
 4. The Deputy Development Commissioner, Sitamarhi
 5. The District Education Officer, Sitamarhi
 6. The District Superintendent of Education, Sitamarhi
 7. The Block Development Officer, Nanpur Block, under Sitamarhi District
 8. The Block Education Extension Officer, Nanpur Block under Sitamarhi District
- Respondents
- =====

Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Md. Imteyaz Ahmad and
Mr. Nilesh Kumar, Advocates.
For the Respondents : Mr. Anil Kumar Sinha, A.C. to S.C. 5

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-02-2015

The appellant is the writ petitioner. Appellant had applied for being appointed as Block Teacher under the handicapped category, for which there was no seat as per roster at Nanpur Block in the district of Sitamarhi. It is his case and it is not denied that the writ petitioner-appellant was then appointed. He worked for a short time. He was sent for training, but thereafter vide memo no. 302 dated 12.06.2007 (Annexure 1 to the writ petition), his appointment was cancelled on the ground that there were more meritorious candidates



available under the handicapped category. There was no disclosure of any name of any person, nor had any person petitioned the Block Education Extension Officer in this regard. The writ petitioner-appellant filed an appeal before the Deputy Development Commissioner (for short 'D.D.C.'), stating that the State was projecting some one as a more meritorious handicapped than the writ petitioner, which was wrong. He was the only handicapped candidate, who had appeared in counseling and was selected. The D.D.C., by his order dated 10.01.2008 (Annexure 5 to the writ petition), without deciding this issue at all, held the candidature of the writ petitioner to be rightly cancelled. This has brought the writ petitioner to this Court.

2. The learned Single Judge dismissed the writ petition; firstly holding that the writ petitioner was not able to establish that there was no one more meritorious candidate than him under the handicapped category and secondly also holding that the order of the D.D.C. being of the year 2008, the writ petition filed in 2010 was belated one.

3. Mr. Ajay Kumar Thakur, learned counsel appearing in support of the appeal, submits that on both counts, the learned Single Judge has erred. At the appellate stage, information received under the R.T.I. Act has been annexed to show that till date no appointment has been made on the post, which should ordinarily have been done if, in



fact, there was a more meritorious candidate. It is further submitted that nowhere in the proceedings either before the Block Education Extension Officer or before the D.D.C. name of any single candidate has come up, who had been wrongly ignored in preference to the writ petitioner. He would, thus, submit that the fact that no person having moved against the writ petitioner's appointment and till date no one having been appointed on the post, clearly shows that removal of the writ petitioner was for reasons other than bona fide.

4. Though counter affidavit and supplementary counter affidavit have been filed at the belated stage by the State, but in none of them any stand is taken with regard to filling up of the post after removal of the writ petitioner-appellant. What is stated is that there were several handicapped candidates with better merit. That is of no consequence because we are not concerned with the merit list. What we are concerned is with respect to the merit list after counseling and deliberately it is not stated that after counseling there was any one, who was left under the handicapped category above the petitioner. Even, for the sake of argument, if we accept what the State says then as a consequence of removal of the petitioner, some one ought to have been immediately appointed. Some one ought to have objected to the petitioner's appointment, but State does not state that fact. No one has complained nor has any one been appointed. In our opinion, this itself

shows that it was a ground made out to get rid of the writ petitioner rather than having any actual merit in the assertion.

5. From the entire order-sheet of the D.D.C., it does not appear that he has noticed as to who was being ignored and how was any person being benefited. In such circumstances, to say that some one else's right was taken away wrongly by the writ petitioner is not correct. When State came up with a factual case then the State has to establish that fact. State brought nothing on record to establish its case. In that situation throwing the entire onus on the writ petitioner by the learned Single Judge was not correct. It is conceded that the onus to establish the case is always on the plaintiff/petitioner, but absence of fact cannot be proved by the petitioner. State being respondent had to substantiate its own action, which it had taken. In that view of the matter, neither the orders of the authorities nor of the learned Single Judge can be sustained.

6. In so far as delay is concerned, it is one of the grounds taken by the learned Single Judge. It must be noted that the delay in challenging the impugned order is not fatal in all the cases, especially when no third party's rights are affected or created in the meantime. Here till date no appointment has been made on the post. No one has come forward even to the authorities claiming that post, obviously because there was no one above the writ petitioner, who had been

ignored. In that view of the matter, merely on the ground of delay, the writ petition could not have been dismissed.

7. We may add that when it is well-established that if an order to the prejudice of a person's right is to be passed, it has to be passed in consonance with the principle of natural justice. Natural justice is one of the facets of Article 14 of the Constitution. In the present case what is alleged by the authorities is that Block Education Extension Officer, who had appointed the writ petitioner, had allegedly committed a mistake. This was said by the Block Education Extension Officer, who took charge later. Because of that the writ petitioner's appointment was being cancelled.

8. Thus, to the question whether cancellation of appointment entails upon civil consequences, the answer can only be it does involve grave civil consequences. The least, Block Education Extension Officer could have done, was to issue a notice to the writ petitioner before cancelling his appointment and the writ petitioner could have immediately demonstrated that there was no one seeking cancellation of his appointment nor was there any one claiming that he was wrongly deprived of the appointment and in that view of the matter there was no necessity to take any action. This compliance of natural justice cannot be brushed aside in a light manner. Once the writ petitioner was appointed, he had a right to continue, that was

being curtailed.

9. In that view of the matter, we have no option but to hold that not only the impugned orders of the authorities are factually unsustainable, but they were also void; inasmuch they were in violation of principle of natural justice. Accordingly, the impugned order dated 12.06.2007, the impugned order dated 10.01.2008 and the impugned order of the learned Single Judge dated 02.03.2012, as passed in C.W.J.C. No. 20493 of 2010, are liable to be set aside and are, accordingly, set aside

10. If the said post has remained vacant till the date the writ petitioner would be recommended for his appointment but he shall not be liable to be paid anything for the period during which he has not worked. In case, the post, reserved for handicapped category, has already been filled up, notwithstanding the impugned orders being set aside, the petitioner would not be reinstated; inasmuch the person, who is already occupying the post, has not been made a party to these proceedings.

11. In the result, this letters patent appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

AFR/
MPS/-

(Jitendra Mohan Sharma, J)

U		T	
---	--	---	--