

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1234 of 2012

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Md. Hasibullah, S/O Habibullah, Resident of Village- Beliyari, P.S.-Amas, District-Gaya At Present residing at Hamzapur, P.S.-Amas, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Magadh Region, Gaya.
5. The District Superintendent of Education, Gaya.
6. The Block Education Extension Officer, Sherghati, Gaya.
7. The Head Master, Urdu Primary School, Bedeyari (Barachatti), District-Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhimanyu Sharma, Advocate
Mr. Prakritita Sharma, Advocate

For the Respondent/s : Mr. Binay Kr. Pandey, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. Abhimanyu Sharma, learned counsel
appearing for the petitioner and Mr. Binay Kumar Pandey, learned
Assisting Counsel to Government Advocate No.2 for the State.

With the consent of the parties, this matter been heard
with a view to its final disposal at the stage of admission itself.

The petitioner has prayed for issuance of a writ in the
nature of certiorari/mandamus for quashing the order bearing
Memo No.4693 dated 6.7.2007 of the District Superintendent of
Education, Gaya, whereby his services have been terminated. The
petitioner prays for reinstatement with consequential benefits.



Facts of the case briefly stated is that the petitioner was appointed to the post of Urdu Teacher at Urdu Prathmik Vidyalaya, Barachatti, Sherghati in the district of Gaya vide order bearing Memo No.3991 dated 20.3.1976. The service of the petitioner was terminated by the order impugned bearing Memo No.4693 dated 6.7.2007 on a doubt being created as to the genuineness of the Matriculation certificate as well as the Teachers' Training certificate submitted by the petitioner. A copy of the order of termination is impugned at Annexure-5 to the writ petition and the name of the petitioner appears at serial no.5 of the said order.

Mr. Sharma, learned counsel appearing for the petitioner has referred to some replies of the petitioner enclosed at Annexures- 6 and 7 to the writ petition which have been written in response to a letter dated 6.4.2007 requiring the petitioner to support his educational qualification as well as his training qualification. He submits that the petitioner submitted all the relevant documents as back as on 23.6.2007 and which is manifest from the receiving present in the said letter which includes the deposit of copy of Matriculation certificate as well as the Training certificate. He submits that a detailed explanation was filed by the petitioner before the District Superintendent of Education, Gaya in this regard on 18.6.2007 clarifying the entire position but the



District Superintendent of Education, Gaya in a mechanical manner and in complete ignorance of the position explained by the petitioner, has proceeded to pass the order impugned dated 6.7.2007 impugned at Annexure-5 charging the petitioner in a sweeping manner of not depositing the required documents.

Feeling aggrieved the petitioner came before this Court in CWJC No.11762 of 2008 which writ petition was heard along with some other cases arising from the same order and a Bench of this Court in consideration of the grievance raised, disposed of the batch of writ petitions vide judgment and order dated 28.10.2010 with a direction to the Deputy Development Commissioner to examine the grievance of the petitioner and pass appropriate order after verification of documents. The operative portion of the order of the Bench runs as follows:

“Therefore, this Court refrains from making any observation with regard to validity of appointment of the petitioners. Petitioners are directed to file formal application before the Deputy Development Commissioner with all their certificates to enable the Deputy Development Commissioner to get an enquiry held, get the certificates verified and to come to a definite finding with regard to validity of appointment of petitioners. If such an application is filed by the petitioners within one month from today, it is expected that the Deputy Development Commissioner shall complete the enquiry and pass appropriate orders in accordance with law within three months thereafter. Restoration of services of the petitioners and any payment of salary to them shall depend upon final outcome of enquiry and final orders of the Deputy

Development Commissioner.

Writ applications are disposed of with the aforesaid observations and directions.”

No steps were taken by the Deputy Development Commissioner in this regard and in the meantime one of the teachers similarly placed and having been terminated by the same order, namely, Md. Zafar Imam whose name appears at serial no.4, filed a writ petition giving rise to CWJC No.266 of 2009 and which was allowed by a Bench of this Court vide judgment and order dated 22.6.2011 and the order of termination dated 6.7.2007 in so far as it related to Md. Zafar Imam impugned at Annexure-5 herein, was quashed and set aside. The judgment and order of the Bench is enclosed at Annexure-11 to this writ petition.

While it is the stand of Mr. Sharma that the laches are not on the part of the petitioner rather at every stage he has cooperated with the respondents and their conduct is such that despite the order of this Court passed as back as on 28.10.2010 in the case of the petitioner as well as the order passed in the case of Md. Zafar Imam (supra) when the Bench even quashed the termination order itself, yet the respondent did not pass any final order in the case of the petitioner and pending the dispute, the petitioner superannuated on 31.7.2008.

A counter affidavit is filed contesting the stand of the

petitioner but admitting that the matter remains inconclusive. It is further informed that the department has gone in appeal against the order passed by the writ Court in the case of Md. Zafar Imam (supra) giving rise to LPA No.1918 of 2011.

This matter was last taken up on 19.9.2016 and when it was informed by learned counsel for the petitioner that not only the Letters Patent Appeal filed by the petitioner bearing LPA No.1918 of 2011 has been dismissed by the Division Bench on 27.11.2013 rather even the Special Leave Petition bearing SLP No.11627 of 2016 filed by the State of Bihar was dismissed by the Supreme Court vide order passed on 15.7.2016. Meaning thereby the issue raised by Md. Zafar Imam (supra) to question the impugned order has reached its finality and case of the petitioner is no different.

Today when this matter is taken up, Mr. Sharma, learned counsel appearing for the petitioner has invited the attention of this Court towards Annexure-D to the supplementary counter affidavit filed on behalf of the State to submit that the Deputy Development Commissioner has woken up from slumber to record his finding in the light of the direction issued by this Court in CWJC No.11762 of 2008 to exonerate the petitioner of the charges vide order bearing Memo no.386 dated 5.7.2014. He has further opined that the petitioner may be treated as compulsory retired with effect from



31.7.2008 and the service rendered by him may be counted for pension purpose. Mr. Sharma has again invited the attention of this Court towards the opinion of the Director, Primary Education present at Annexure 'F' to submit that even after the opinion of the Deputy Development Commissioner, yet the authorities of the Education Department do not wish to bring an end to the dispute and the Director, Primary Education has opined for filing of review.

I have heard learned counsel for the parties and I have perused the records.

The report of the Deputy Development Commissioner, Gaya enclosed at Annexure 'D' exonerates the petitioner of all accusation. Meaning thereby the very foundation for the order of termination impugned at Annexure-5 has been removed. That being the position, there is no question of any compulsory retirement rather the consequences would be that the petitioner would be deemed to be reinstated with effect from the date of termination i.e. 6.7.2007 and would be in deemed service until the date of his superannuation on 31.7.2008. The outcome of the contest raised by Mohd. Zafar Imam (supra) only furthers the case of the petitioner.

In the uncontested position discussed and in view of the report of the Deputy Development Commissioner present at Annexure-D, the order impugned passed by the District



Superintendent of Education, Gaya dated 6.7.2007 in so far as it relates to the present petitioner, is rendered illegal and is accordingly quashed and set aside and as a consequence the petitioner would stand reinstated by deeming fiction and would also be entitled to back wages which, in the circumstances, I would quantify at 50% thereof. The petitioner would also be entitled to consequential post-retirement benefits as found admissible to him. The arrears of salary together with consequential retiral benefits should be paid to the petitioner by the authorities concerned within a period of three months from the date of receipt/production of a copy of this order.

This writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-102016
Transmission Date	NA