

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4672 of 2016

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Rekha Kumari, W/o Nandeshwar Kumar, resident of Village- Ashrafpur, Supaul,
Police Station Patori, P.O- Supaul, Distt- Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Department of Vikash Bhawan, District- Patna.
2. The Director, Primary Education, Vikash Bhawan, Bailey Road, Patna.
3. The Regional Deputy Director, Human Resource Department, Muzaffarpur.
4. The District Education Officer, Hajipur, Vaishali
5. The District Programme Officer, Hajipur, Vaishali.
6. The Block Development Officer, Block- Jandaha, District- Vaishali.
7. The Block Education Officer, Block- Jandaha, District- Vaishali.
8. Panchayat Secretary, Manshipur, Bijrauli Panchayat, Block- Jandaha, District- Vaishali.
9. Shikshak Niyojan Ikayi, through its Secretary, Block Office, Jandaha, Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh, Advocate
Mr. Ravi Shankar Choudhary, Advocate
For the Respondent/s : Mr. Sanjay Kumar, AC to GA-13

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 15-12-2016

I have heard parties and perused the records of this case.

The petitioner seeks quashing of the order dated 19.12.2015, as contained in Annexure-7, by which she has been terminated from the post of Block Teacher.

It is submitted that, as would be apparent from the impugned order, the Block Teachers Employment Unit (hereinafter referred to as 'the Employment Unit') convened a meeting on 17.12.2015 and took the aforesaid decision on the basis of certain



enquiry which was made by the District Programme Officer (Annexure-B) finding that the petitioner has obtained Basic Teaching Certificate (B.T.C.) from Sewa Bharti Adhyapan Mandir, Varanasi which is a non-existing institution and, thus, her degree appears to be fraudulent.

The first ground taken by the petitioner is that the order, since been passed without adhering to the principles of *audi alteram partem*, is fit to be set aside on the aforesaid ground alone as the petitioner's service has been terminated without granting any reasonable opportunity and without issuance of any show cause notice to her.

Secondly, it is submitted that the petitioner's salary was stopped since 30.06.2012 and despite the representations having been filed by the petitioner the same was not resumed. The petitioner approached this Court by filing CWJC No.20419 of 2013. However, the same was withdrawn in view of the fact that the competent authority, namely, the District Teachers Employment Appellate Authority (hereinafter referred to as 'the Authority') was already constituted in terms of Rule 18 of the Bihar Teachers Appointment Rules, 2006 and, as such, permission was granted to her to move before the Authority. The petitioner moved before the Authority and the matter remained pending before it. In fact, the petitioner has



appended order sheet of the Authority which shows that the respondent authorities remained absent on several occasions and, therefore, the matter could not be disposed of by the Authority. In the meantime, the impugned order came to be passed by the Employment Unit without issuance of any show cause notice upon the petitioner.

Thus, it is contended that action of the authorities, apart from suffering from the vice of illegality, also is a malafide as at one hand the authorities were not appearing before the Authority so that the matter could have been resolved there itself and, on the other hand, behind the back, a decision has been taken to terminate the petitioner.

Counter affidavit has been filed on behalf of respondent nos. 5 to 7 as well as respondent no.9 taking identical stand that after enquiry the concerned institution was found non-existence, therefore, petitioner's services have been terminated.

However, none of the counter affidavits have specifically stated that the petitioner, who was admittedly appointed as Block Teacher and was paid salary till the month of June 2012, was terminated after granting reasonable opportunity of showing cause as to why his services should not be terminated. That apart, it is also apparent that the petitioner's salary was stopped since July 2012 and that had prompted the petitioner to approach this Court by filing



CWJC No. 20419 of 2013 which was allowed to be withdrawn by a coordinate Bench of this Court permitting the petitioner to approach the Tribunal against the impugned action of the respondents of stopping her salary without any rhyme and reason. The matter remained pending and it appears from the order sheet of the Tribunal that on several occasions, matter was taken up by the Tribunal but the respondents did not appear in the matter and, at the same time, the impugned Annexure-7 has been passed terminating the services of the petitioner on the aforesaid ground.

In my considered view, that action cannot be sustained in law. Even if it is presumed that the petitioner was appointed on the basis of a forged/fraudulent document, a show cause notice would be must. That apart, it is intriguing as to why the authorities refrained themselves from appearing before the Authority where identical stand could have been taken by them. On the other hand, the impugned order has been passed by them behind the back of the petitioner.

So far as the certificate is concerned, admittedly that is of the year 1994, i.e., before coming into existence of NCTE which was created in the year 1995. The petitioner has appended the orders of this Court as well as the Authority and claims that this Court as well as the Authority has held that on the basis of certificate granted by the Sewa Bharti Adhyapan Mandir, Varanasi, one cannot be ousted from



service but, in the petitioner's case, the same has been done. Apart from above, the petitioner has also appended the letter of the Additional Director of Education, Uttar Pradesh of the year 1970 in which it is stated that the name of existing institution, v.i.z, Talim Adhyapan Mandir was changed to Sewa Bharti Adhyapan Mandir. Apart from the above, it is claimed by the petitioner that even the website of NCTE of the year 2000 shows the name of this institution at sl.no.264 indicating that it was in existence and was recognized even by the NCTE.

Obviously, these aspects have not been considered by the Employment Unit. Thus, in my considered opinion, the impugned order is not at all sustainable in law as it suffers from the aforesaid vital lacuna and, as such, the same is quashed and set aside.

The Authority is directed to dispose of the concerned Appeal No.JD/15/2015 within a period of three months from the date of receipt/production of a copy of this order.

The respondent authorities as well as the petitioner would be at liberty to raise all the grounds which have been raised in this writ application or other ground which the respondent authorities thinks fit to be raised before the Authority itself. Only after the decision of the Authority, the issue of termination of petitioner can be taken up by the Employment Unit depending upon the findings of



Authority on the relevant issues.

With the aforesaid observations, findings and directions,
this writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	04.03.2017
Transmission Date	N.A.

