

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12856 of 2008

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MANISH KUMAR, SON OF LATE CHANDESHWAR TIWARY, RESIDENT OF
MUHALLA INDRAPURI, ROAD NO.5, POLICE STATION PATLIPUTRA, TOWN AND
DISTRICT PATNA Petitioner

Versus

1. THE BIHAR SCHOOL EXAMINATION BOARD, PATNA THROUGH ITS CHAIRMAN
2. THE CHAIRMAN, BIHAR SCHOOLS EXAMINATION BOARD, PATNA AND
3. THE SECRETARY, BIHAR SCHOOL EXAMINATION BOARD, PATNA.

..... Respondents

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Appearance :

For the Petitioner : Mr. Suresh Pd.Singh, No.1 Advocate and
Kumari Rashmi,. Advocate

For the Respondents : Mr. Girijesh Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

ORAL JUDGMENT

Date: 29-06-2016

. The petitioner, who was routine clerk in the Bihar School Examination Board, Patna (herein after referred to as the Board) in 2007, prays for quashing of the enquiry report, dated 4.6.2007 (Annexure 9) as well as order, dated 16.7.2007 passed by the Chairman, whereby he has been removed from service.

2. Facts of the case, in short, are as follows:-

3. One P.K.Sinha, Deputy Secretary, Home department, Government of Jharkhand, Ranchi vide Letter no. 345 dated 7.2.2006 made a request to verify the enclosed matriculation certificate of Sri Lal Babu Paswan and to confirm whether his date of birth is 28.2.1949. In course of verification from the Original Tabulation Register (OTR) as well as Duplicate Tabulation Register (DTR) by Vigilance cell it was found that the date of birth of Sri



Paswan was changed to 28.2.1949 from 28.2.1947. As correction made in date of birth was suspicious, the Board wrote a letter dated 26.2.2007 to the Headmaster of GD High School, Patliputra, Patna to provide a copy of the Tabulation Register/Cross list in respect of Sri Paswan. In response to the Board's letter, the principal of the said school vide letter no.247, dated 26.2.2007 provided all the required informations. It transpired from a copy of the Tabulation Register/Cross list available in the school that the date of birth of Sri Paswan was 28.2.1947. As such, the change in date of birth to 28.2.1949 from 28.2.1947 was manipulation. An internal enquiry was conducted jointly by Smt Gita Singh, the deputy secretary, and Sri Brajnandan Paswan, the then Section officer of the Board. As per report of preliminary enquiry, dated 10.3.2007 role of two employees of the Board, e.g. the petitioner and one Bhanu Pratap Singh were found to be suspicions. A copy of the enquiry report, dated 10.3.2007 has been annexed as Annexure E to the counter affidavit. Verification report was communicated to Mr. P.K.Sinha, the Deputy secretary, Home Department, Government of Jharkhand, Ranchi vide letter no. 371, dated 14.3.2007 with a request to initiate departmental proceeding as well as legal action against Sri Paswan. A copy of letter, dated 14.3.2007 is annexed as Annexure F to the counter affidavit. The petitioner was suspended vide Memo no. 103



dated 16.3.2007 and as many as seven charges were framed against him and on conclusion of enquiry, the enquiry officer recorded finding of guilt vide his report, dated 4.6.2007 contained in Annexure 9. Charge no. 1 to 6 were found to be proved. Except for the charge of preparing forged duplicate matriculation certificate, charge no.7 was also found to be proved. The disciplinary authority after providing an opportunity to the petitioner to submit his show cause to the adverse findings recorded in the enquiry report, passed order of removal from service is on 16.7.2007.

4. The case of the petitioner is that one Lal Babu Paswan deposited a fee of Rs.150/- to the Cashier on cash counter with an application for issuance of duplicate copy of his matriculation certificate. In the affidavit, aforesaid Lal Babu Paswan mentioned his age as 58 years on 19.7.2006. One Bhanu Pratap Singh, a staff in the office of the Deputy Secretary of the Board handed over application of Lal Babu Paswan with a request to prepare a duplicate Matriculation certificate, on urgent basis.

5. On 5.8.2006, the petitioner prepared a duplicate Matriculation certificate on the basis of date of birth corrected in the OTR and the DTR by the competent authority. As there was cutting and change in the date of birth, he forwarded the file to the Section officer with noting that before finally giving the duplicate



matriculation certificate, the date of birth of Lal Babu Paswan in DTR and OTR may be seen, which contains cuttings and changes. A copy of forwarding note, dated 5.8.2006 is contained in Annexure 4 at page 48 of the brief. However, without taking cognizance of his forwarding note, the officials signed and issued the duplicate matriculation certificate showing the age of Sri Paswan as 28.2.1949. The petitioner, on basis of the note of caution/forwarding note dated 5.8.2006, contained in Annexure 4, submits that he has falsely been held guilty of charges, against materials on record which would establish his innocence. He submits that in his own note, dated 5.8.2006 addressed to the Section officer, he clearly stated that there is cutting in the OTR and DTR and only after careful perusal, the certificate ought to have been signed. He next submits that the allegation that he prepared the certificate in haste is incorrect. The petitioner submits that Bhanu Pratap Singh, an employee of the office of the Deputy Secretary approached and handed over the application of Sri Paswan with request to prepare duplicate matriculation certificate of Sri Paswan on priority basis. He next submits that he was not afforded reasonable opportunity to place his case and order of removal was passed without considering his 2nd show cause reply. The punishment is harsh and excessive as other person Bhanu Pratap Singh was lightly let off.



6. Per contra respondents submit that admittedly cuttings in the OTR and DTR was made without any order in the concerned file. As such, involvement of the petitioner cannot be ruled out in the episode. The petitioner in such circumstances ought not to have prepared duplicate matriculation certificate, without express order of the superiors. Furthermore, signature on the cuttings in the OTR/DTR too were not legible and were vague.

7. I have heard learned counsel for the parties.

8. Exercise of powers in the matter of judicial review is limited to correction of error of procedure and law. This Court would not substitute its own view for the views of the disciplinary authority, unless and until it is perverse and not based on materials germane to the facts of the case.

9. In the instant case, I find substance in the case of respondents that the petitioner in view of cuttings and change in OTR/DTR, ought not to have prepared the duplicate certificate without due approval of the authorities. Thus he was also in haste in preparation of the certificate. As such it is difficult to come to a conclusion that the findings of respondents are based on no materials. In this view of the matter, I find no infirmity in the proceeding. I further find from paragraphs 10 to 13 of the counter affidavit of respondents that sufficient opportunity was given to

petitioner to explain his case.

10. This takes us to the next question, whether the punishment of removal from service is harsh and excessive. It is true that the petitioner on finding cuttings and change in the OTR/DTR, did not bring the anomalies to the notice of the Board authorities personally along with relevant records. Nonetheless, I find that the petitioner did forward a note to the Section officer that there are cuttings and changes in the OTR/DTR and before signing the certificate, the concerned documents should be duly looked into.

11. In view of the above, though lapses cannot be undermined, the punishment of removal is harsh and excessive. The order of punishment of removal dated 16.7.2007 (Annexure 12) passed by Chairman of the Board is set aside. The matter is, as such, remanded to the Chairman of the Board to pass afresh order with respect to quantum of punishment. It is made clear that in the facts of the case, petitioner would not be entitled to any remuneration for the period of removal.

12. There is another aspect of the matter that as to whether any action was taken against those administrative officers who overlooked petitioner's notings and signed the certificate without due verification, whether cuttings in OTR/DTR changing the date of birth from 28.2.1947 to 28.2.1949 was pursuant to any order in

the file or on the orders of the Courts.

13. The writ petition is thus allowed to the extent mentioned above.

14. Let the Registry communicate this order to the Chairman of the Board.

(Samarendra Pratap Singh, J)

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