

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22958 of 2013

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Hari Shankar Singh, Son of Ram Nagina Singh, Resident of Village -
Imadpur, P.O. Imadpur, P.S. Bhagwanpur, District - Vaishali

.... Petitioner

Versus

1. The State of Bihar, through the Commissioner-Cum-Secretary,
Department of Education, Government of Bihar, New Secretariat, Bihar,
Patna
2. The Director, Department of Primary Education, Government of Bihar,
New Secretariat, Bihar, Patna
3. The District Magistrate, Vaishali
4. The District Education Officer, Vaishali
5. The District Program Officer (Establishment), Vaishali
6. The Block Education Officer, Bhagwanpur Block, District - Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Shashi Bhushan Kumar

For the Respondents : Mr. S.Raza Ahmad

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

4 04-07-2016 Heard counsel for the petitioner as well as learned
counsel appearing for the State.

The petitioner seeks quashing of letter no. 8067, dated
31.10.2013, issued by the District Programmer Officer, Vaishali,
whereby the appointment of the petitioner as an Assistant Teacher,
has been cancelled.

The case of the petitioner is short is that he was
appointed as Assistant Teacher under Handicapped Category in
Upgraded Middle School, Boariya, Block Bhagwanpur, Vaishali,
vide memo no. 853, dated 07.02.2012, issued under the signature

of District Programme Officer, Vaishali. The petitioner's appointment was made on the ground that the petitioner was suffering from hearing disability upto an extent of 70%. The order of appointment was provisional and subject to verification of certificates.

In order to verify the claim of the petitioner that he was handicapped, he was subjected to medical examination by a Board constituted by Civil Surgeon, Vaishali. The Medical Board opined that the petitioner does not suffer from any disability. On report of the Medical Board, the District Programme Officer cancelled the appointment of the petitioner vide letter no. 8067, dated 31.10.2013.

The petitioner has challenged his termination on two grounds. He submits that the medical examination was not conducted in terms of instruction of the Social Welfare Department contained in letter, dated 25.05.2010. Clause-3 of the said letter contains the manner and the mode in which the claim of handicapped is to be examined. The petitioner contends that neither the Medical Board was constituted in terms of the instruction contained in letter, dated 25.05.2010, of the Social Welfare Department, nor the medical examination was conducted in terms of the guidelines contained therein.



Learned counsel next submits that he is one of the candidates appointed out of 34540 vacancies pursuant to recommendation of list by Justice Chattopadhyaya and accepted by Hon'ble Apex Court. In view of the clear-cut instruction of the Hon'ble Apex Court contained in order, dated 18.07.2013, that none of the persons appointed out of 34,540 should be disturbed in any way, he could not have been removed from service, particularly, subsequent to the order of the Hon'ble Apex Court.

Learned Counsel for the State submits that the District Programme Officer, in terms of the conditions mentioned in the appointment letter, made request to the Civil Surgeon, Vaishali, for medical examination of the disability of the petitioner. Consequent thereto, a Medical Board was constituted by the Civil Surgeon and the disability of the petitioner was accordingly found 0% and as such, he has been terminated from the service.

I have heard counsel for the parties.

As the case of the petitioner would succeed on the first count that the medical examination of the petitioner was not conducted in terms of the instructions contained in Clause-3 of the guidelines contained in letter, dated 25.05.2010, of the Social Welfare Department, this Court would not go into other issue whether the appointment of the Petitioner is saved from any

further scrutiny in terms of order of Hon’ble Supreme Court. The impugned order of termination is set aside. The District Programme Officer, Vaishali, will take steps for fresh examination of the petitioner’s disability in accordance with the guidelines contained in Clause-3 of the said letter.

It goes without saying that the petitioner would be entitled for salary for the period he has worked as Assistant Teacher. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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