

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.229 of 2016

1. Om Prakash Singh Son of Shri Ramdeo Singh resident of village & P.O. Aruwan, Police Station - Bhagwanpur Hat, District - Siwan at Present Assistant Teacher, Upgraded Middle School Gopalpur, Anchal Goreyakothi, District - Siwan

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The Commissioner, Saran Division, Chapra
4. The District Magistrate, Siwan
5. The District Education officer, Siwan
6. The District Programme officer (Establishment), Siwan
7. The District Treasury officer, Siwan
8. The Block Education officer, Goreyakothi, District - Siwan
9. The Headmaster Cum Drawing and Disbursing Officer Upgraded Middle School Gopalpur, Anchal Goreyakothi, District - Siwan
10. The Chairman, Bihar Staff Selection Commission, Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s :	Mr. Bindhyachal Singh, Adv.
	Mr. Umesh Kumar Mishra
For the Respondent/s :	Mr. Anuj Kumar A.C. to G.P.24
For the SCC :	Mr. Chandra Bhushan Das, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-09-2016

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner, Mr. Anuj Kumar A.C. to G.P.24 for the State and Mr. Chandra Bhushan Das, learned counsel appearing for the Staff Selection Commission.

The petitioner is aggrieved by the order bearing No.739 dated 12.2.2014 of the District Education Officer, Siwan whereby his



appointment has been cancelled and which order has been affirmed by the Commissioner, Siwan Division vide order passed on 17.4.2015 when the Service Appeal No. 107 of 2014 has been dismissed. Copies of the order passed by the District Education Officer, Siwan and the Commissioner, Siwan Division are impugned at Annexures-11 and 19 respectively to the writ petition.

The petitioner was appointed as an Assistant Teacher in Upgraded Middle School, Gopalpur, Anchal Goreyakothi in the District of Siwan. The petitioner claims to have passed matriculation examination in the year 1979 in 3rd Division securing 389 marks out of 900 marks and has also obtained Teacher's Training from the Government Primary Teacher's Training College, Pusa, Samastipur in the Session 1979-81. Copies of the certificates are placed at Annexures-1 and 2 respectively. It is following 3450 vacancies advertised on 10.12.2003 by the State Government through the Staff Selection Commission that the petitioner filed his application and was appointed. A copy of the appointment order bearing No. 226 dated 7.2.2012 is enclosed at Annexure-4 to the writ petition and the name of the petitioner appears at Serial No. 12. Following the stipulation present at Clause 7 of the appointment order requiring a verification of the documents and of cancellation of the appointment on discovery of any forged document or incorrect information that during



scrutiny of documents it transpired that the certificate of some of the teachers were of doubtful character. The District Programme Officer on receiving a report in this regard from the District Education Officer sought a report from the Secretary, Bihar School Examination Board vide his letter bearing No. 1524 dated 29.10.2012, a copy of which is present at Annexure-7. The report of the Deputy Secretary (Vigilance), Bihar School Examination Board is present at Annexure-8 and the Deputy Secretary while furnishing information in respect of 5 other candidates, reported that the petitioner had secured 3rd division having 389 marks in the matriculation.

The application form and the certificates submitted by the petitioner are a part of the F.I.R. which is annexed at Annexure-14 to the writ petition and at page 69, the self attested matriculation certificate of the petitioner shows 631 marks with 1st division and such is also the information given by him in his application which is present at page 66 of the proceedings.

A show cause was thus issued to the petitioner vide Annexure-9 requiring him to explain the discrepancy and which is responded to by a denial. It is in consideration of the circumstances existing that the order impugned dated 12.2.2014 has been passed by the District Education Officer, Siwan cancelling the appointment of the petitioner and which has been affirmed by the appellate authority. Feeling

aggrieved, the petitioner is before this Court.

Mr. Bindhyachal Singh learned counsel for the petitioner while denying the charge has submitted that even if such was the position and a charge requiring a verification was on the cards, the respondents should have resorted to a regular departmental proceedings for confirmation thereof and simply going by the certificate present at page 69 was not enough to cancel the appointment of the petitioner. He further submits that although a matriculation qualification was an essential qualification but since that is not the foundation for the appointment, any discrepancy occurring therein, may not be reacted in the manner leading to cancellation of appointment because the marks in matriculation was not the basis on which the petitioner was granted appointment to the post.

The two fold argument advanced by Mr. Singh learned counsel for the petitioner is that:

- (a) In the nature of charge set up against the petitioner, it necessitated drawing of a regular departmental proceeding; and
- (b) Since the matriculation qualification by itself is not the foundation on which the appointment of the petitioner rests, even if there be a discrepancy in the marks obtained, this would not result in cancellation of appointment.



The argument of Mr. Singh has been contested by Mr. Anuj Kumar learned counsel appearing for the State and who responding to the issues raised submits that it is during the course of verification of the certificate deposited by the petitioner and others that it transpired that some of the certificates were forged as reported by the Block Development Officer and which required to be further verified from the Bihar School Examination Board. He submits that a letter in this regard was written by the District Programme Officer to the Secretary, Bihar School Examination Board and has been responded to Vide Annexure-A which related to six candidates inclusive of the petitioner whose name is present at Serial No.6. He submits that the marks reported by the Deputy Secretary obtained by the petitioner in matriculation is 389 marks securing 3rd division which was contrary to the certificate deposited by the petitioner, a copy of which is also a part of F.I.R. With reference to the said certificate at page 69 he submits that the self attested certificates show that the petitioner has obtained 631 marks in 1st division which is not the correct position rather a gross case of forgery. He submits that even if the marks obtained by the petitioner in matriculation may not have been a deciding factor yet it showed an attempt to mislead and of securing appointment on forged documents which could only result in a cancellation of appointment.

In so far as holding of department proceeding is concerned, he submits with reference to Clause (vii) of the appointment letter present at Annexure-4 that it very clearly stipulates that in case any incorrect information or forgery is found in the papers then the appointment would be cancelled. He thus submits that in the circumstances, no interference is called for in the orders impugned.

Mr. Das learned counsel for the Staff Selection Commission in reference to the counter affidavit on record endorsed the submission of Mr. Anuj Kumar to submit that the application form submitted by the petitioner together with the certificates deposited are on record with the Commission and would clearly confirm the charge against the petitioner of seeking appointment on forged documents.

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

While the charge on the petitioner is of seeking appointment on forged documents and for which counsel for the State as well as the Staff Selection Commission rely upon the application form and the certificates appended, the complete set whereof is enclosed at Annexure-R/1 to the counter affidavit of the Staff Selection Commission and is also part of criminal case instituted, this charge is being contested by Mr. Singh on a plea of denial as well as on grounds that it is a work of person with vested interest. The matter has reached the criminal court in view of the

F.I.R. instituted, arising from Goreyakothi P.S. case No. 38 of 2014 and the matter is pending where the charge of forgery is to be tested.

The issue is that even if the matriculation marks did not enure to the benefit of the petitioner in securing the appointment except that it was a confirmation of his passing the matriculation examination as argued by Mr. Bindhyachal Singh, whether the default alleged is condonable. In my opinion the charge is not as simple as being projected and canvassed by Mr. Singh for it is not a case of typographical error creeping in the information supplied by the petitioner rather it is a case of seeking appointment on forged documents. Not only the matriculation certificate is forged rather the information given by the petitioners on his application form present at page 66 of writ petition and again at Annexure-R/1 to the counter affidavit of the Staff Selection Commission, endorses this position. The truthfulness of the matriculation certificate may be pending before the trial court but the conduct is out in open. This opinion of mine is sufficient to reject the first issue raised by Mr. Singh, learned counsel for the petitioner.

This would bring to this Court to the second issue raised as to whether the charges in question would invite a regular departmental proceeding. The appointment order present at Annexure-4 is dated 7.2.2012 and while Clause (i) thereof clearly provides that the

appointment is temporary until verification of the certificates and that a minimum of one year of regular service would be necessary for confirmation, Clause (vii) of the appointment order makes the selection/ appointment conditional upon verification of the credentials and certificates deposited. For ready reference Clause (i) and Clause (vii) of the appointment order is being reproduced hereinbelow:-

“i. यह नियुक्ति पूर्णतः अस्थायी होगी । उम्मीदवारों के लिए निर्धारित सेवाकालीन प्रशिक्षण पूरा करने तथा प्रमाण-पत्रों की जाच के उपरान्त न्यूनतम एक साल की सेवा अवधि पूरा होने के उपरान्त ही सेवा सम्पुष्ट की जायेगी ।

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 vii. प्रमाण-पत्रों के जाँच के दौरान संस्था को अमान्य पाये जाने अथवा संस्था द्वारा निर्गत प्रमाण-पत्र की मान्यता नहीं होने अथवा प्रमाण-पत्र फर्जी/गलत पाये जाने पर नियुक्ति रद्द करते हुए भुगतान की गयी राशि की एक-मुश्त वसुली की जायेगी एवं कानूनी कार्रवाई भी की जायेगी।”

The petitioner gave his joining on 10.2.2012 and within five months thereafter that an adverse report was received by the District Programme Officer doubting the matriculation certificate deposited by the petitioner on forgery. The said fact is confirmed from the show cause issued to the petitioner dated 31.7.2012 impugned at Annexure-6. Along side the District Programme Officer has also sought verification report from the Bihar School Examination Board vide his letter dated 30.10.2012 placed at Annexure-7 and the report in respect of the petitioner and five others is present at Annexure-8. It is considering the report that a second show cause was again issued to



the petitioner on 20.12.2013 vide Annexure-9 and which was responded to by the petitioner vide Annexure-10 but was not accepted resulting in the order of termination dated 12.2.2014 passed by the District Education Officer, Siwan which has been affirmed by the Divisional Commissioner, Saran Division vide Annexure-19. Thus, in view of the stipulation present in Clause-(i) read along side (vii) of the appointment order since an enquiry into the appointment of the petitioner was already initiated and has resulted in the order of cancellation of appointment, in my opinion, it did not warrant a recourse to a departmental proceedings for the appointment rested on the verification of the certificates submitted by the candidates and since it is found to be a forged document then a cancellation of appointment is only a consequence and is a part of the appointment process. No case of holding a regular departmental proceeding is made out, in such circumstances which is governed by the appointment order itself.

Although Mr. Singh has tried to persuade this Court that the documents in question was a handiwork of person with vested interest but considering that the application form present at Annexure-R/1 of the counter affidavit of Staff Selection Commission not only bears the self attested photograph of the petitioner rather even the certificates enclosed are self attested by him, I am not persuaded with the

arguments so advanced.

For the reasons discussed, no case for indulgence is made out.

The writ petition which is accordingly dismissed.

(Jyoti Saran, J)

Bibhash/-

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CAV DATE	
Uploading Date	3.10.16
Transmission Date	