

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14545 of 2015

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Ajit Singh son of Baleshwar Singh Resident of Village- Barani, P.s Charpokhari,
district Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal secretary Education Department Government of Bihar, New Secretariat Patna.
3. The Director(Secondary Education) Government of Bihar, New Secretariat Patna.
4. Deputy Director (Secondary Education), Government of Bihar, Secondary Education) Government of Bihar , Office, Budh Marg ,Patna.
5. Regional Deputy Director of Education , Patna Division,Patna.
6. District Education Officer, Rohtas ,Sasaram.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiwjag Choudhary
For the Respondent/s : Mr. K.K. Jha- AAG14
Mr. Amish Kumar
Mr. P. K. Thakur

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 03-02-2016

Heard learned counsels for the parties.

Petitioner admittedly is a Physical Trained Teacher and is working as a Physical Teacher. The school in question where the petitioner is posted is known as Sarvodaya High School, Ganj Bharasara, District-Rohtas. He has approached the High Court because by virtue of the impugned order, contained in Annexure-9, dated 18.08.2015 he is being divested of his responsibility to discharge the functions of an Acting Headmaster of the school.

The District Education Officer, Rohtas at Sasaram issued



the letter, contained in Annexure-1, dated 12.02.2015, directing the petitioner to officiate as Incharge of the school in question by virtue of the fact that he is the senior most Teacher in the school. To support such a position, petitioner has annexed Annexure – 3, which is a chart, prepared by him, showing the status of the petitioner and other teachers' position therein. Petitioner's name figures at Sr. No. 1. However, such appointment led to certain controversies and claim by yet another teacher, namely, Vijay Choudhary, who was a regular Assistant Teacher, working in the same institution and he claimed a right for being made Incharge questioning the decision contained in Annexure – 1.

The matter traveled before the Deputy Director, Secondary Education, Government of Bihar, Patna and he issued the impugned order, contained in Annexure-9, dated 18.08.2015, asking the District Education Officer, Rohtas not only to undo what had been done by him but also a show-cause was sought from him on this issue, keeping in mind that the petitioner was a Physical Teacher.

Learned Sr. Counsel, representing the petitioner submits that the petitioner has all the requisite qualifications to hold the post of a Headmaster, therefore, looking at his seniority he was appointed to act as Incharge Headmaster of the school. The District Education Officer had done no wrong and the Deputy Director in fact, has erred by passing Annexure – 9 and taking away a right

created in favour of the petitioner.

The stand of the State is in support of the decision under challenge issued by the Deputy Director. According to them the law stands settled that a Physical Trained Teacher forms a different cadre and he does not come within the ambit of a teaching cadre of the school. The rules governing Physical Teachers are different and therefore their seniority is of no avail. The seniority amongst Assistant Teachers of the school only have a right to officiate and seniority of a Physical Teacher will not in any manner help him occupy the post of an Acting Headmaster of any institution. In fact, to buttress that position learned counsel, representing the State has produced three decisions on identical matters, dealt by different Benches. Some of them being C. W. J. C. No. 18891 of 2010, decided on 19.02.2013; C. W. J. C. No. 1848 of 2007, decided on 29.07.2011 and a rather detailed decision rendered in a recent case of Jagat Narayan Singh and others versus The State of Bihar & others and other analogous cases, which was C. W. J. C. No. 15869 of 2007, decided on 19.12.2012.

After going through the decision of the Learned Single Judge in Jagat Narayan Singh (supra), learned senior counsel made a valiant effort to draw advantage of the observation made by the Learned Single Judge in paragraph 71 and 72.

How I wish such position in any manner could aid the Court to help the petitioner to hang on to the position of Acting

Headmaster, because the same said Learned Single Judge in the earlier case of Ram Prasad Ram in C. W. J. C. No. 1848 of 2007 has dealt with the rules governing the two stream of teachers and has held that such benefit is not available to a Physical Teacher.

The Court, therefore, is not inclined to interfere with Annexure-9 as the same is in consonance with the settled law and the rules in place. In fact, the Court would direct the Deputy Director as well as the Director, Secondary Education, Government of Bihar, Patna that the District Education Officer, Rohtas should be suitably dealt with for creating an unnecessary litigation. Besides it also shows that he does not know the relevant rules and the law on the subject and may be the decision in favour of the petitioner was passed for totally extraneous reason.

Writ application is dismissed for the reasons indicated above. Even Annexure-F of the counter affidavit is not required to be interfered with for the same set of reason. The petitioner will go back to the position of a Physical Teacher and will work as such.

(Ajay Kumar Tripathi, J)

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