

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12372 of 2011

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Om Ranjan Pandey S/o Shri Kameshwar Pandey, resident of Village-Keso Narayanpur (Nayar), P.S. Tajpur, District-Samastipur, at present working as Clerk of Jeevani High School, Patori Bazar , District - Samastipur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Bihar, Patna
2. The Director, Secondary Education, Bihar, Patna
3. The Regional Deputy Director of Education, Darbhanga
4. The District Education Officer, Samastipur
5. The Head Master, Jeevni High School, Patori Bazar, Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv.
Mrs. Shashi Priya Pathak, Adv.

For the Respondent/s : Mr. Sunil Kr. Mandal, SC-24

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

10 09-03-2016 Heard Sri Tej Bahadur Singh, learned Senior Counsel, who was assisted by Smt. Shashi Priya Pathak, learned counsel for the petitioner and Sri Sunil Kumar Mandal, learned Standing Counsel no.24.

The petitioner has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of India, with a prayer to quash an order , contained in Memo No.1356 dated 18.06.2011 (Annexure-8 to the writ petition) passed by the District Education Officer, Samastipur, whereby the services of

the petitioner was terminated.

Short fact of the case ,as disclosed in the writ petition, is that in the year 1977 itself, the petitioner was appointed as Clerk in Janta High School, Musepur, Siwan by the Managing Committee of the said school. However, subsequently his services was terminated and again in the year 1981, pursuant to an advertisement, the petitioner applied and on 04.01.1981 he was selected as Clerk in the school and he started functioning there. The said school was subsequently granted recognition and it attained the status of Nationalised School vide Government Notification No.19267-78 dated 15.07.1982. However, the case of the petitioner was not considered at the time of take over. Finally, the District Education Officer on the forwarding letter of the Headmaster of the said School made inspection of the said school and recommended the matter in respect of appointment of the petitioner to the Director, Secondary Education, Bihar, Patna, which was finally approved by the Director, Secondary Education, Bihar, Patna vide Annexure-2 to the writ petition i.e. Memo No.300 dated 31.01.1994. Thereafter, the petitioner started functioning. However, on some occasion, the petitioner was proceeded departmentally and some minor punishments were imposed in the year 2006. Since without any rhyme and reason,



the petitioner's salary was stopped, the petitioner started filing representation and he also filed writ petition vide C.W.J.C.No.2604 of 2011 for payment of salary, which was stopped since 2010. In the meanwhile, since the family of the petitioner was facing great hardship due to paucity of fund, the wife of the petitioner filed a complaint before the Lokayukta and this fact was noticed by the District Education Officer, Samastipur. Thereafter unilaterally by the order impugned , contained in Memo No.1356 dated 18.06.2011 the District Education Officer terminated the services of the petitioner. The said order i.e. Annexure-8 to the writ petition has been assailed in the present writ petition.

Sri Singh, learned Senior Counsel appearing on behalf of the petitioner has assailed the order impugned mainly on two grounds; firstly it was argued that the order impugned was passed in complete violation of principles of natural justice. He submits that once the petitioner's service was approved by the Director, Secondary Education, Bihar, Patna in the year 1994 itself and he was continuing in service regularly, in any event before passing an order of termination, a minimum requirement was to provide an opportunity of hearing by asking the explanation from the petitioner. Even in such cases, a regular departmental proceeding

was required to be initiated, whereas on earlier occasion, a departmental proceeding was initiated and minor punishment was imposed against the petitioner. In the said departmental proceeding, the petitioner was put under suspension, which was subsequently revoked, but at this juncture, to the reasons best known to the District Education Officer, the order impugned was passed giving go bye to all the principles of natural justice. The second limb of argument of Sri Tej Bahadur Singh, learned Senior Counsel appearing on behalf of the petitioner is that once the appointment of the petitioner on the recommendation of the District Education Officer was approved by the Director, Secondary Education, Bihar, Patna, without any approval of the Director, Secondary Education, his services were not required to be terminated by the District Education Officer. By way of referring to Annexure-8 to the writ petition, he submits that even the District Education Officer in the impugned order has recorded about seeking clarification/ guidelines from the Director, Secondary Education but to the reasons best known to the District Education Officer, without getting any approval or direction from the Director, Secondary Education, the services of the petitioner was terminated and, as such, it has been argued that the order impugned is without jurisdiction being not approved by the

Director, Secondary Education, who was the appointing authority of the petitioner as per approval made in the year 1994.

Sri Sunil Kumar Mandal, learned Standing Counsel no.24 has tried to defend the order impugned. By way of referring to Rule-8 of the Bihar Nationalised Secondary Schools (Service Conditions) Rules 1983, he submits that as per rule, the District Education Officer is the controlling authority and he was competent to pass the impugned order. However, on the question as to whether the before passing the impugned order, reasonable opportunity was given to the petitioner or any regular proceeding was initiated against the petitioner, he was not in a position to satisfy the court.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly Annexure-2 as well as the impugned order i.e. Annexure-8. The services of the petitioner was approved long back in the year 1994 by specific order of the Director, Secondary Education, Bihar, Patna. This order was passed in the year 1994. Meaning thereby the services of the petitioner was approved by the Director, Secondary Education and that was approved on the recommendation of the District Education Officer. Once the appointment of the petitioner was finally approved by the



Director, Secondary Education, Bihar, Patna and only thereafter, the petitioner was allowed to join his service and continued after approval of the Director, the District Education Officer was not having any jurisdiction to pass order of termination in respect of the petitioner. Moreover, on perusal of the impugned order i.e. Annexure-8 to the writ petition, it is evident that the District Education Officer himself had sought clarification/guidelines from the Director, Secondary Education, Bihar , Patna and in the impugned order, he has recorded that since he has not received any guideline, he was passing the order of termination. Apparently, this order is illegal and not sustainable in the eye of law. Moreover, once the petitioner was appointed long back and he continued for several years, on no ground without providing any opportunity the order impugned was required to be passed.

Accordingly, the Court is of the considered opinion that the order impugned is illegal, void and accordingly same is hereby set aside with a direction to reinstate the petitioner from the date, on which date the impugned order was issued with all consequential benefits. Meaning thereby, the petitioner shall be entitled to get salary for the period, during which he remained absent in view of the impugned order. All the formalities must be completed within a period of eight weeks from the date of

receipt/production of a copy of this order.

With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J)

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