

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9275 of 2017

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Sunil Kumar, Son of Sri Dasrath Prasad, resident of Village-Dunjan Chak, P.O. +
P.S.-Sakshona, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The District Education Officer, Rohtas at Sasaram.
5. The Block Education Officer, Block-Shivsagar, District -Rohtas.
6. Mukhiya, Gram Panchayat Raj Silari, Block-Shivsagar, District-Rohtas.
7. Panchayat Secretary, Gram Panchayat Raj, Silari, Block-Shivsagar, District-Rohtas.
8. The Lokayukta, Bihar through its Secretary, Kautilya Marg, Bailey Road, Patna.
9. Anusha Kumari, Daughter of Chhabinath Ram, resident of Village+P.O.- Dhavpokhar, P.S.-Karamchat Sadar, District-Kaimur.
10. Urmila Devi, Wife of Sheojagi Ram, Resident of Village-Kurtha, P.O.-Baraila, District-Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary and Mr. Akshansh Ankit, Advocates
For the Respondent/s	:	Mr. Subhash Chandra Mishra, S.C. 16

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-08-2017

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the



following reliefs:-

“a) To set aside the orders dated 28.03.2017 and 21.04.2017 passed in 05/Lok (Education) 136/2016 by a bench of the Hon’ble Lokayukta whereby and whereunder disciplinary action was directed to be initiated against the petitioner without following the due procedure provided in the statute and without coming to a conclusion of guilt of the petitioner in the inquiry. These orders also suffer from the vagaries of being self contradictory and based on misconceived notions.

b) To direct the concerned authorities to not to give effect to the directions and observations made in orders dated 28.03.2017 and 21.04.2017 passed in 05/Lok (Education) 136/2016 by a bench of the Hon’ble Lokayukta during the pendency of the instant writ application, in as much as, the said orders seek to usurp the functions falling exclusively within the domain of executives.

c) To stay the further proceedings of 05/Lok(Education)136/2016 pending before the Hon’ble Lokayukta during the pendency of the instant writ application in so far it relates to the present petitioner.

d) To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.”

3. The petitioner, who is the Block Development Officer of Shivsagar Block in the district of Rohtas, had written a letter to the *Mukhiya* and Panchayat Secretary of Gram Panchayat Raj, Selari in the same block with regard to the appointment of Panchayat Teachers. The controversy relates to the respondents no. 9 and 10 being candidates for such post under the Scheduled Caste



category and in an earlier round of litigation before the High Court in C.W.J.C. No. 20232 of 2010, the respondent no. 9, who was the petitioner was successful and the appointment of respondent no. 10 was set aside with a direction that fresh counselling be conducted for the post of Panchayat Teacher in question. Pursuant thereto, the respondent no. 9 was also appointed on the said post. Thereafter, the respondent no. 10, after almost two years, filed a complaint before the B.D.O. (petitioner) and the petitioner in turn wrote to the *Mukhiya* as well as the Panchayat Secretary (respondents no. 6 and 7) giving the brief background of the controversy and directing for further action relating to appointment on the said post. This resulted in the respondent no. 9 being removed from the post and the respondent no. 10 again being appointed. The respondent no. 9 being aggrieved, moved before the *Lokayukta*, Bihar and in the proceedings, a report was called from the authorities and upon appearance of the petitioner, further one month time was given to file reply and at the same time, it was observed that on the basis of the enquiry report of the District Education Officer, Rohtas dated 27.03.2017, the pendency of enquiry before the *Lokayukta* shall not stand in the way of the Controlling Department of the petitioner proceeding in accordance with law and further the Principal Secretary of the Rural Development Department, Bihar, Patna was



required to inform the *Lokayukta* with regard to the action taken in light of the said report of the District Education Officer, Rohtas dated 27.03.2017. The petitioner is aggrieved by such observations and has assailed the same in the present writ application.

4. Learned counsel for the petitioner submitted that in C.W.J.C. No. 20232 of 2010, final order was passed on 02.02.2012 by the Hon'ble Judge but incidentally he is presently holding the post of *Lokayukta* and has passed the orders, which are under challenge in the present writ application. He submitted that once the contention of respondent no. 9 was upheld and the selection of respondent no. 9 was set aside, the matter again coming before the same person, ought not to have been heard by him for the reason that justice should not only be done but also seem to be done. It was submitted that since the Hon'ble Judge has initially passed the order dated 02.02.2012, being a Judge of this Court at the relevant point of time, he had taken it as a personal cause and has intervened in the matter which should have been avoided. He further submitted that the *Lokayukta* on the one hand has granted time to the petitioner to file his reply but on the other hand has also observed that the pendency of the proceeding would not come in the way of the Controlling Department to proceed against the petitioner and further an action taken report has been called for. This, according to learned



counsel amounts to direction to the authorities to act against the petitioner, which is unwarranted. Learned counsel submitted that even as per Section 27 of the Bihar Lokayukta Act, 2011, only action which can be taken by the *Lokayukta* against a public servant is to recommend to the competent authority for initiation of departmental proceeding under the Rules of disciplinary proceeding applicable to such public servant. Learned counsel submitted that without the petitioner being given an opportunity to present his case, especially when on the one hand, time has been given to file reply, simultaneously, the Department has also been given a free hand to proceed departmentally, is not proper. It was submitted that such power does not vest in the *Lokayukta*. Learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Baidyanath Mahapatra v. State of Orissa** reported as (1989) 4 SCC 664, the relevant being at paragraph-8, that a person should not be a judge of his own cause. He also relies upon a decision of the Hon'ble Supreme Court in the case of **M. P. State Coop. Bank Ltd. v. Nanuram Yadav** reported as (2007) 8 SCC 264, the relevant being at paragraph no. 39, for the proposition that the *Lokayukta* after enquiry into the allegations, if is satisfied that such allegation is established, shall submit a report in writing, communicate his findings and recommendations along with the relevant documents,



materials and other evidence to the competent authority. Learned counsel submitted that as the incumbent *Lokayukta* who is hearing the matter, was author of the judgment of the Court dated 02.02.2012 in C.W.J.C. No. 20232 of 2010, he carried a bias against the petitioner and thus, was unsuited to hear the matter.

5. Having heard learned counsel for the petitioner, the Court does not find any merit in the present writ application. At the very outset, the Court rejects the plea of bias against the incumbent *Lokayukta*, who has passed the orders which are impugned in the present writ application. It is incidental that a person may have been a judge of this Court and may have passed the order in the year 2012, but in the entire order, there was no comment, much less any adverse comment, on the role of the B.D.O., Shivsagar, the post of the petitioner holds currently. The controversy started in the year 2016 when the post may have had different incumbents and thus, it cannot be said that the incumbent *Lokayukta* carries a bias against the petitioner, as he was not neither in the picture nor anything was held against him in the order passed by him while acting in the capacity of judge of this Court on 02.02.2012 while disposing of C.W.J.C. No. 20232 of 2010. Such contention, which was forcefully pleaded, is taken seriously by the Court and for making such insinuation, which is totally frivolous, unfounded and also



malicious, not only on facts but also in law, the Court has no hesitation to award a cost of Rs. 25,000/- against the petitioner, to be paid from his personal pocket. The same be deposited with the Bihar State Legal Services Authority within one month from today and receipt filed in the Registry of this Court. Upon failure to do so, the matter shall be placed before the bench for appropriate orders.

6. Coming to the merits of the matter, the so called portions of various orders, which the petitioner finds objectionable, and for getting the same set aside has moved in the present writ application, being in the orders dated 07.02.2017 and 21.04.2017, which are quoted hereinbelow for ready reference:

07.02.2017

“25. As noted above the two officers namely Sri Sunil Kumar, B.D.O. Shivsagar and Sri. Suresh Pandey, B.E.O. Shivsagar, against whom departmental proceeding for the allegations made by the complainant has been sought to be initiated as per the aforementioned report of the D.E.O. Rohtas, dated 27.03.2017 are also present in person and have sought time to file their explanations.

26. As a matter of fact, both of them having realized that under Panchayat Teacher Appointment Rules, the power of appointment of Panchayat Teacher is vested only in Niyojan Samiti consisting of Mukhia, Panchayat Secretary and three others with no role at all of either B.D.O. or B.E.O. have sought reprieve from any action being taken against them by taking a plea that they had committed a bonafide mistake recommending for appointment of Urmila Devi by displacing Anusha Kumari, the complainant. They, infact, have also



prayed for time to atone their conduct by filing a fresh affidavit admitting their mistake and expressing their regret and unconditional apology for the acts done by them.

27. Similarly, through Sri Parash Nath Paswan, Mukhia, Selari Panchayat and Sri Ramavtar Ram, Panchayat Sevak of the Selari Panchayat, have filed their explanation but on queries made from them as to how they could reverse the earlier order of appointment of Anusha Kumari based on the directions of Hon'ble Patna High Court they to meekly surrendered by taking a plea through they were ignorant and were some how mislead by the orders of Sri Sunil Kumar, B.D.O. Shivsagar and Sri. Suresh Pandey, B.E.O. Shivsagar, they have accordingly, prayed for adjournment of this enquiry for a period of one month in which they intend to take corrective actions."

21.04.2017

"Mr. Ashok Kumar Choudhary, learned counsel, who seeks to represent Sri. Sunil Kumar, Block Development Officer (B.D.O.) Shivsagar, has prayed for and is allowed a month's time to file his reply but it is made clear that pendency of this enquiry shall not stand in the way of the controlling department of both Sri. Sunil Kumar, Block Development Officer (B.D.O.) Shivsagar and Sri. Suresh Pandey, Block Education Officer (B.E.O.), Shivsagar, in proceeding against them in accordance with law.

Sri. Suresh Pandey is an officer of Education Department and, therefore, it will be the responsibility of Sri. Pawan Kumar Choudhary, learned counsel, representing Education Department, to inform this Authority as to the decision taken against Mr. Pandey whereas the parent department of Mr. Sunil Kumar Pandey is said to be Rural Development Department and, therefore, the Principal Secretary of the Rural Development Department, Bihar, Patna will inform this Authority as to the action taken against Sri. Sunil Kumar Pandey in the light of the proposal



submitted by District Education Officer, Rohtas vide his letter dated 27.03.2017.”

7. From the plain reading of the said portions, the Court is unable to decipher as to what actually is the grievance of the petitioner. The order only reveals that the report of the DEO, Rohtas dated 27.03.2017 seeks initiation of departmental proceeding in view of allegation made by the complainant and further that the pendency of the enquiry before the *Lokayukta* shall not stand in the way of the Controlling Department of the petitioner in proceeding against him in accordance with law and further that the Principal Secretary of the Department shall inform as to what action has been taken against the petitioner in light of the proposal submitted by the District Education Officer, Rohtas vide his letter dated 27.03.2017. Thus, there is absolutely no recommendation, much less any direction, by the *Lokayukta* against the petitioner for any action against him. To that extent, the reliance of the learned counsel for the petitioner on Section 27 of the Act and the two decisions relied upon by him, have no relevance in the facts and circumstances of the present case. The petitioner has been given time to file his reply and the enquiry is still pending. It cannot be assumed that the petitioner shall not be given a fair hearing for the reason that there is no bias established either from the facts or from the records against the



incumbent *Lokayukta*, who is hearing the matter against the petitioner, as has been discussed earlier in this order.

8. For the reasons aforesaid, the writ petition stands dismissed.

9. However, it shall be open to the petitioner to file a reply which shall be dealt with in accordance with law by the *Lokayukta* while hearing the matter.

(Ahsanuddin Amanullah, J.)

P. Kumar

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