

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13807 of 2017

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Devanand Singh Son of Dashrath Singh Resident of Village - Mankoshi, P.S. - Bodh Gaya, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Gaya.
3. Bihar School Examination Board through its Chairman, Budh Marg, Patna.
4. The Secretary, Bihar School Examination Board, Budh Marg, Patna.
5. The District Education Officer, Gaya.
6. The District Programme Officer (Establishment), Gaya.
7. The Block Education Officer, Block Gaya, District - Gaya.
8. The Panchayat Secretary, Gram Panchayat Mortatal, P.S. - Bodh Gaya, District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate with Mr. Vipin kumar
For the Respondent/s	:	Mr. SMT. SHILPA SINGH-GA12
For the Board	:	Mr. Gyan Shankar
For Intervener	:	Mr. Lal S.N. Rais with Mr. Vikash Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 19-12-2017 The present writ application has been filed seeking quashing of press communique No. 80 of 2017, issued by the Bihar School Examination Board, Patna (Hereinafter referred to as the '**Board**'), whereby the petitioner's mark-sheet, registration certificate and original certificate of having passed matriculation examination of session 1987 has been cancelled. It is further mentioned in the said notice that a direction is being issued for registration of a criminal case.

2. From the impugned press communique, it is evident



that the decision to cancel the petitioner's result is based on an enquiry report submitted by the District Education Officer to the effect that the petitioner, after changing his date of birth fraudulently appeared in the annual examination held in the year 1987 by the Board though he had already passed the matriculation examination in the year 1975 with a different date of birth.

3. From the pleadings on record, it appears that one Chandan Kumar and the present petitioner were applicants for the post of Panchayat Teacher in Moratal Panchayat, Bodh Gaya in the district of Gaya. The said Chandan Kumar was appointed as Panchayat Teacher. However, on complaint made by the petitioner, the District Magistrate, Gaya had cancelled appointment of Chandan Kumar, whereafter the petitioner was appointed as Panchayat Teacher in the said Panchayat. The said order of the District Magistrate was challenged by the Chandan Kumar before the District Employment Appellate Authority. The appellate authority, however, appears to have dismissed the appeal, whereafter Chandan Kumar filed a writ application before this Court challenging the order of the appellate authority giving rise to CWJC No. 14603 of 2015. In the said writ application, Chandan Kumar took a plea that the mark-sheet of



the petitioner on the basis of which he came to be appointed as Panchayat Teacher was forged. While dismissing the writ application on the ground of delay and laches, this Court by order, dated 17.09.2015, passed in CWJC No. 14603 of 2015, observed that the said Chandan Kumar might take steps against the appointment of the petitioner as Panchayat Teacher in accordance with law. LPA preferred against the said order dated 17.09.2015 came to be dismissed as withdrawn on 15.09.2017.

4. It was in this background that the said Chandan Kumar appears to have pursued the matter, which finally led to passing of the impugned order.

5. A counter affidavit has been filed on behalf of the Bihar School Examination Board. This is to be noted that consequent upon cancellation of the petitioner's matriculation certificate, the appointment of petitioner as Panchayat Teacher has been cancelled by an order, dated 13.11.2017 passed by the Panchayat Secretary of the concerned Gram Panchayat, which is also being assailed in the present application through amendment petition being I. A. No. 8598 of 2017.

6. Since the impugned order, dated 13.11.2017, is consequential to the impugned decision of the Bihar School



Examination Board, dated 25.08.2017 to cancel the matriculation certificate, I. A. No. 8598 of 2017 is allowed. The petitioner is accordingly, permitted to question the legality of order, dated 13.11.2017.

7. I.A. No. 7891 of 2017 has been filed by Chandan Kumar seeking intervention asserting his locus standi on the ground that the impugned action has been taken on the complaint made by him. I.A. No. 7891 of 2017 is allowed. Let Chandan Kumar be impleaded as Respondent No. 9. The Intervention application filed on behalf of the Intervener-respondent has been treated to be counter affidavit on his behalf, as requested by the learned counsel for the intervener-respondent.

8. I have heard learned senior counsel, representing the petitioner, learned counsel, representing the Bihar School Examination Board and learned counsel for the intervener-respondent at length.

9. Before issuance of the impugned press notice and before a decision was taken by the Bihar School Examination Board to cancel the petitioner's result of matriculation examination, a show cause notice was issued to the petitioner, which has been brought on record by way of Annexure-2 to the



writ application. This is also not in dispute that the petitioner had replied to the said show cause notice, dated 04.03.2017.

10. What is evident from press communique based on the decision of the Board, dated 25.08.2017, which has been brought on record by way of Annexure-G to the counter affidavit filed on behalf of the Bihar School Examination Board, that the decision to cancel certificate is based on an enquiry report submitted by the District Education Officer. In the impugned decision, there is no mention of the date of the report of the District Education Officer. The report of the District Education Officer has, however, been brought on record by way of Annexure-C to the counter affidavit. It also transpires from reading of the show cause notice that there was no reference of the said report of the District Education Officer as being the basis for issuance of the said notice.

11. It is in this background, a plea has been taken on behalf of the petitioner that action of the Bihar School Examination Board is in violation of the principles of natural justice inasmuch as the report of the District Education Officer, which was the sole basis for the Bihar School Examination Board to take decision was not supplied to him along with the show cause notice. It is being urged on behalf of the petitioner,



accordingly, that the petitioner missed his right of reasonable opportunity of being heard in the absence of the enquiry report of the District Education Officer.

12. It has, however, been submitted on behalf of the Bihar School Examination Board that the petitioner had participated in the enquiry held by the District Education Officer on the request of the Bihar School Examination Board.

13. Learned counsel appearing on behalf of the intervener-respondent has submitted that the documents eloquently suggest the petitioner obtained matriculation qualification in 1987 by playing fraud and concealing true state of affairs from the Board in violation of the rules framed by the Bihar School Examination Board. He has submitted that the petitioner has not been able to make out a case that the absence of the report of the District Education Officer prejudiced his case in any manner and in the absence of any real prejudice having been caused to him, the petitioner cannot take a plea of violation of principles of natural justice.

14. I have carefully examined the show cause notice and the impugned order. The show cause notice does not at all refer to report of the District Education Officer as the basis for the said show cause notice or as the basis for contemplated



decision. What was done by the District Education Officer before issuance of the show cause notice by the Bihar School Examination Board can be at the maximum considered as preliminary enquiry. If it was the intention of the Board to base its decision on the report of the District Education Officer, the Board ought to have mentioned in the same show cause notice itself. The matter would have been then entirely different since in that circumstance, the petitioner might have sought for a report of the District Education Officer. For the reason that the impugned decision is based on report of the District Education Officer, which was not mentioned even in the show cause notice, the action of the Bihar School Examination Board in cancelling the petitioner's result of matriculation examination and his certificate cannot be sustained being in violation of the principles of natural justice.

15. The impugned decision of the Board dated 25.08.2017 and consequent press communique dated 27.08.2017 are, hereby, quashed.

16. This application is allowed.

17. I direct the Bihar School Examination Board to issue show cause notice afresh by referring the report of the District Education Officer on which the decision of the Board is based,



if that is only report on which the Bihar School Examination Board intends to take any action against the petitioner. If such notice is issued to the petitioner within two weeks from the date of receipt/production of a copy of this order, the petitioner shall be obliged to reply to the same within one month thereafter.

18. So that the petitioner does not cause any unnecessary delay in conclusion of the action to be taken by the Board, though the impugned decision of the Panchayat Secretary cancelling the petitioner's appointment is being interfered with and is being set aside by the present order, I direct that the petitioner shall remain under suspension till conclusion of the enquiry and shall be paid subsistence allowance. The Bihar School Examination Board will be required to take final decision within a period of three months from the date of receipt/production of a copy of this order.

(Chakradhari Sharan Singh, J)

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