

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5769 of 2016

Along with

Interlocutory Application No. 9488 of 2016

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Md. Shadaq, Son of Md. Moinuddin of Village- Chakai, P.O- Chakai Hat, P.S.- Joki Hat, Distirct- Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Director, Primary Education, Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Teachers Employment Appellate Authority, Purnia through its Member.
4. The Member, District Teachers Employment Appellate Authority, Purnia.
5. The District Magistrate, Purnia.
6. The District Education Officer, Purnia.
7. The District Programme Officer (Establishment), Purnia.
8. The Block Education Officer, Amour, District- Purnia.
9. The Panchayat Secretary, Gram Panchayat Raj Pothia, Gangaili, P.S. and Block Amour, District- Purnia.
10. Mukhia, Gram Panchayat Raj Pothia, Gangaili, P.S. and Block Amour, District- Purnia.
11. Md. Anjar Ansari, Son of Domar Ansari of Village Navi Bhuna, Post Office, Ekamba, P.S.- Jalalgarh, District- Purnia.
12. Head Master Primary School, Rahua Tola, Block Amour, District- Purnia.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Uday Bhanu Roy and
Mr. Sunil Kumar, Advocates

For the State : Mr. Ajay Bihari Sinha, G.A. 8
Mr. Upendra Kumar Singh, A.C. to G.A. 8

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-04-2017

Heard learned counsel for the petitioner and the State.

2. The petitioner is aggrieved by order No. 15 dated 19.02.2016, passed by the District Teachers Employment Appellate Authority, Purnia (hereinafter referred to as the 'Authority') in Misc. Case No. 04 of 2015, by which his appointment has been cancelled



with a direction to make fresh appointment on the post of Panchayat Teacher in Gram Panchayat Raj Pothia, Gangaila in the Block of Amour, District-Purnia.

3. Learned counsel for the petitioner submitted that after being duly appointed, the petitioner was working peacefully without any complaint but it appears that due to some rivalry from some person, who could not be appointed, as he was below in the merit list to the petitioner, and had moved the Authority in Appeal Case No. 24 of 2014, by order dated 20.11.2014, there was a direction to the Authorities of the Education Department to verify the certificate of the petitioner, especially, relating to his date of birth. Learned counsel submitted that the complainant again filed Misc. Case No. 04 of 2015, alleging non compliance of the order dated 20.11.2014, passed in Appeal Case No. 24 of 2014 and in the said case, a finding has been given against the petitioner and his appointment has been cancelled with a direction to make fresh appointment, which is illegal. Learned counsel submitted that in Misc. Case No. 04 of 2015, the petitioner was neither noticed nor heard at any stage and further the entire discussion in the order is erroneous and apparently contrary to the records, inasmuch as, the certificates of the petitioner and his younger brother have been taken to pertain to the petitioner and on the basis of them having two different dates of birth, a finding has been



given that the petitioner had manipulated the entire selection process and thus, the selection has been set aside. Learned counsel submitted that the petitioner is Md. Shadaq having date of birth 01.02.1985, whereas his younger brother is Md. Sadique, whose date of birth is 12.01.1986. Learned counsel submitted that the petitioner has pursued his study from the Madarsa Education Board whereas his younger brother has pursued his education from the Bihar School Examination Board. It was submitted that the name of both the brothers sound similar but the two are different personalities and thus, the order of the Authority dated 19.02.2016, is totally an error of record and thus, requires interference. Learned counsel submitted that in a Miscellaneous case filed for the purposes of compliance of the earlier order passed by the Authority the matter cannot be decided afresh on merits, as has been done in the present case, inasmuch as, in the first case only a direction was given to the Authority of the Education Department to look into the matter whereas in the Miscellaneous case, the issue has been decided by the Authority itself without there being anything left to the Department to consider. Learned counsel submitted that the aforesaid fact is clear from the certificates referred in the impugned order and the dates of birth mentioned therein. Learned counsel further drew the attention of the Court to a copy of the entire ordersheet of the case which has been annexed in the writ



petition to show that there was neither any notice or opportunity of hearing afforded to the petitioner before the order was passed.

4. Learned counsel for the State tried to defend the order but was not in a position to controvert the submissions of learned counsel for the petitioner.

5. Having considered the matter, in the opinion of the Court, the order impugned cannot be sustained. First and foremost, an order passed having serious civil consequences and in the present case, the dismissal of the petitioner, having been passed without even notice to him and affording any opportunity itself is sufficient and valid ground for interference in the order. Besides that being a fact, from the materials brought on record it is clear that in the impugned order it has been taken for granted that the petitioner and his brother were one and the same person, which is erroneous. The certificates brought on record, have even not been controverted and the impugned order does not show that any of the certificates has been found to be forged or fabricated. Thus, there being a logical explanation to the two certificates, one from the Madarsa Board and another from the Bihar School Examination Board, of relating to two different persons, who are full brothers and co-incidentally also have similar sounding names, not having been discussed or noticed, has rendered the order impugned unsustainable.



6. For the reasons discussed above, the order impugned dated 19.02.2016, passed by the Authority as contained in order No. 15 in Misc. Case No. 04 of 2015 is set aside. All consequential orders, including removal of the petitioner from the post of Panchayat Teacher, are also set aside. The petitioner stands reinstated to his original post with all consequential benefits, including backwages.

7. The writ petition stands allowed in the aforementioned terms.

8. Interlocutory Application No. 9488 of 2016, filed for interim stay of the order impugned, having become infructuous, stands disposed off.

(Ahsanuddin Amanullah, J.)

P. Kumar

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