

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18496 of 2011

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1. Kanak Lata Singh Wife Of Sri Sanjay Kumar Singh Resident Of Village And P.O. Numar, P.S. Malaypur, District Jamui, Presently Working As An Assistant Teacher In Project Kamini Girls High School, Malaypur, District-Jamui.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna.
3. The Secretary, Secondary Education, Government Of Bihar, Patna.
4. The Director, Secondary Education, Government Of Bihar, Patna.
5. The District Education Officer, Jamui, District-Jamui.
6. The Headmaster, Project Kamini Girls High School, Malaypur, District-Jamui.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. SHASHI BHUSHAN KUMAR MANGALAM

For the Respondent/s : Mr. KUMARI AMRITA GP10

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2017

Heard learned counsels for the parties.

The petitioner has preferred this writ application for quashing the letter dated 21.7.2008 issued vide Memo No.564P under the signature of Respondent no.4, the Director, Secondary Education, Government of Bihar, Patna contained in Annexure-4, whereby the petitioner's claim for being regularized as Assistant Teacher in Kamini Project Girls High School, Malaypur, Jamui has been rejected on the ground that the name of the petitioner did not figure in the list of working teachers issued by School nor there is any document on record to show that the petitioner was working, at the relevant time. Further prayer has also been made for quashing the letter dated 7.5.2010 issued vide memo no.219P (Annexure 9)



under the signature of Respondent no.4 whereby again the claim of the petitioner for being regularized as Assistant Teacher was rejected on the same ground. Further prayer has been made for issuance of a writ in the nature of mandamus for regularization of the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner was appointed as Assistant Teacher in Kamini Project Girls High School, Malaypur, Jamui in 1986 by the Managing Committee of the school. The petitioner joined the said post on 26.9.1986. The question of regularization of teachers of the Project Schools travelled to the Supreme Court in S.L.P. (Civil) No.6626-6675 of 2001 and 6676-6681 of 2001 wherein the Apex Court directed for constitution of Committee for absorption/regularization of teachers working in the Project High Schools. Consequently, in pursuance to the direction of the Supreme Court, the Education Department of the Government of Bihar constituted a Three Men Committee to examine the claim of regularization of teachers working in different project schools. The Committee further directed the Headmasters of the Project High Schools to send report regarding teaching and non-teaching employees of respective schools. Consequently, the Headmasters of the school in question submitted report in prescribed Form I showing the name of the petitioner at Sl. No. 8 as contained in Annexure 3. The said report also reflects that the petitioner was working on the date of transmission of report. Subsequently, Respondent no. 4 issued a letter vide memo no. 564P dated



21.7.2008 as contained in Annexure 4 wherein the name of the petitioner figured at serial no. 4, whereas the claim of the petitioner was rejected on the ground that the petitioner's name did not figure in the list of working teachers transmitted by the school and that the petitioner was not working at the relevant time, in the school in question.

It is further submitted that the Headmaster of the School in question represented to the Respondent no. 4 agitating that the name of the petitioner figures at Sl. No. 8 in the report submitted under Form I and the personal particulars of the petitioner with regard to services were also included in the said report. It was also reported that the petitioner is working since the date of her appointment and her services have been found satisfactory. The report also contained the teachers' attendance register and other eleven documents (Annexure 5).

The petitioner subsequently, again represented before the Director, Secondary Education, Government of Bihar, Patna bringing the details of documents in proof of his working in the school to the full satisfaction of all concerned with the supporting documents which were earlier submitted by the petitioner. Similar report was submitted by the Incharge Principal of the school in question vide letter no.83 dated 21.9.2010 to the District Education Officer, Jamui (Annexure 11). The District Education Officer, Jamui, transmitted letter dated 30.9.2010 addressed to the Director, Secondary Education, Government of Bihar stating therein that the name of the petitioner figures at Sl. No. 8 in Form I submitted by the



school stipulating that the petitioner is working since 26.9.1986 to till date. But the Director, Secondary Education, Government of Bihar, vide order dated 6.5.2010 (Annexure 9) again, rejected the representation of the petitioner on the ground that no document has been produced to consider the claim of the petitioner as per the approved policy for regularization. The specific ground for rejection remains the same as the petitioner's name did not figure in the list of working teachers transmitted by the school and there is nothing on record to suggest that the petitioner is still working in the school in question. Both the orders, issued by the Director, Secondary Education, Bihar, Patna as contained in Annexure 4 and 9, reflect that both the orders have been passed with complete non-application of mind as the reasons assigned for rejecting the claim of the petitioner is not based on the materials on record.

It is further submitted by Mr. Mangalam that though several dates were fixed for hearing but the petitioner was not given any opportunity of personal hearing inspite of the fact that the petitioner produced all the documents in support of her claim for regularization.

Learned counsel for the Respondents submits that the name of the petitioner was not mentioned in sequence in the list of the working teachers of the school sent by the Headmaster. However, the name of the petitioner has been found mentioned in different ink and handwriting at Sl. No.XI. It was also found that the petitioner was not working in the school. The further claim is that only nine posts of teachers were sanctioned in the Project



School. The subject wise distribution suggests that only two posts were sanctioned in the science group – one for Mathematics and one for Biology, while the petitioner has done her graduation in Biology, whereas the services of one Sri Astik Prasad Singh, who being B.Sc. Biology was appointed earlier to the petitioner in 1984, were already regularized. It is further contended that the petitioner is untrained.

This Court finds that the reasons which have been assigned in the counter affidavit for rejecting the claim of the petitioner are not there in either of the impugned orders as contained in Annexure 4 or 9. It is well settled law that the reasons cannot be supplemented subsequently if it is not apparent in the order impugned. This Court further finds that the reasons assigned in the impugned orders are absolutely contrary to the material on record and the stand taken by respondents in the counter affidavit.

“It is the settled principle of law that a statutory functionary makes an order based on certain grounds. Its validity must be judged by reasons so mentioned and such reasons cannot be supplemented by fresh reasons in the shape of an affidavit/counter affidavit or otherwise. If it is allowed to be done then the order becomes bad in the beginning by the time it comes to the court on account of a challenge, gets validated by additional grounds later on brought out.” As has been held by a Constitution Bench of the Apex Court in the case of Mohindar Singh Gill Versus The Chief Election Commissioner, New Delhi and others reported in (1978) 1 SCC 405, at paragraph no. 8. The stand of the respondent no. 4, the Director, is that the name of the petitioner did not



figure in the list of working teachers transmitted by the school nor there is any document to show that the petitioner was working at the relevant time, whereas in paragraph no.13 of the counter affidavit dated 13.2.2013 filed on behalf of the respondent nos. 1 to 5, an inconsistent stand has been taken firstly to the effect that the name of the petitioner was in list of working teachers of the school transmitted by the Headmaster and contrary to that it was contended that her name was added in different ink and hand writing at serial number XI. Hence, this stance of respondents in counter affidavit is not only per se inconsistent as that of the stand of the respondent no. 4 in the impugned order but it totally negates the reason assigned in the impugned order. The grounds for rejection of the claim of petitioner, gets not only supplemented but also substantially amended.

Considering the fact that the reason assigned for non-regularization of the petitioner is found to be contrary to the materials on record and the subsequent order contained in Annexure 9 does not reflect that the reports of the Headmaster and the District Education Officer, Jamui were considered by Respondent no. 4, hence the impugned orders contained in Annexures 4 and 9 are hereby quashed. Respondent no. 4 is expected to consider the entire issue afresh and pass appropriate order in accordance with law on the basis of report submitted by the Headmaster in pursuance to the direction issued by the committee preferably within a period of three months from the date of receipt/production of a copy of this order.

With the aforementioned observation/direction, this writ



application stands disposed of.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.4.2017
Transmission Date	NA

