

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13573 of 2015

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Mohan Prasad, Son of Late Dasrath Prasad, resident of village- Lala Hata, Police Station- Zamo Bazar, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector, Siwan.
5. The District Education Officer, Siwan, District- Siwan.
6. The District Programme Officer, Siwan, District- Siwan.
7. The Block Development Officer-cum-Member Secretary, Block Shiksha Niyojan Sammittee, Goreakothi, District- Siwan.
8. The Block Education Officer, Goreakothi, District- Siwan.
9. The Mukhiya, Gram Panchayat Raj, Hatimpur, Anchal- Goreakothi, District- Siwan.
10. The Panchayat Secretary, Gram Panchayat Raj, Hatimpur, Anchal- Goreakothi, District- Siwan.
11. The Head Master, Upgraded Middle School, Lala Hata, Anchal- Goreakothi, District- Siwan.
12. Mahesh Kumar, S/o Charitar Mahto, R/o Village- Jagdishpur, P.S. Jamo Bazar, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ganjendra Kumar Singh and Mr. Udit Narayan Singh, Advocates
For the Pvt. Respondent/s	:	Mr. Naresh Prasad, Advocate
For the State	:	Mr. Binay Kumar Pandey, A.C. to G.A. 2

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-03-2017

Heard learned counsel for the petitioner, State and the
respondent no. 12.

The petitioner has filed the writ petition for quashing of
the order dated 30.07.2015 passed by the Block Employment
Committee, Goreakothi as well as the consequential order contained



in Letter No. 3 dated 31.07.2015, by which he has been removed from the post of Panchayat Teacher.

The petitioner was employed in the year 2005 pursuant to the vacancy created by non extension of the employment of the respondent no. 12 and continued on the same for some time. However, respondent no. 12, in the meantime, moved before the District Teachers Employment Appellate Authority, Siwan (hereinafter referred to as the 'Authority') and his non extension of employment was held to be bad and it was directed that he be re-employed. When the order was not obeyed, the respondent no. 12 also moved before the District Magistrate for both his reengagement as well as against the employment of the petitioner. Upon enquiry being made, the authorities have taken action by holding the employment of the petitioner to be bad and have subsequently also terminated such employment, which are impugned in the present writ application.

Learned counsel for the petitioner submitted that prior to such termination, he was not given any notice. It was further alleged that the same was at the behest of respondent no. 12, who has moved the Authority after six years, when the petitioner was already working as Panchayat Teacher with effect from 01.07.2006. Learned counsel submitted that the employment of the petitioner was not under challenge by the respondent no. 12 before the Authority and the order



having been passed without notice to the petitioner, it cannot be a ground to terminate the employment of the petitioner. Learned counsel further submitted that he was duly selected by the Selection Committee of the concerned Panchayat along with others and the said selection process has not been held to be bad.

Learned counsel for the State submitted that the petitioner was also given notice to clarify his stand with regard to him being appointed on an Extremely Backward Caste post when he belonged to the Backward Caste and the caste certificate produced by him being suspicious. He submitted that the concerned Panchayat Secretary was also asked to submit the attested merit list as well as the book recording the proceeding of the meeting and the petitioner was further called upon to produce the attested copies of his qualification as well as the caste certificate. He submitted that thereafter, a report was submitted on the basis of which the engagement itself of the petitioner was found to be illegal.

Learned counsel for the respondent no. 12 submitted that the petitioner was illegally appointed on an Extremely Backward Caste post whereas he belonged to the Backward Category. For such proposition, he has drawn the attention of the Court to various annexures in the counter affidavit filed by him, including the copy of the merit list which has been enclosed in the rejoinder filed by the



petitioner himself in which the caste of *Kamkar*, as far as he is concerned, has been shown to be of Extremely Backward Caste whereas in the case of his brother, who was also in the merit list, in the same transaction, has been shown as a Backward Caste and another person namely, Pradeep Kumar, also belonging to *Kamkar* Caste has been shown as a Backward Caste. Learned counsel submitted that this itself indicates that the petitioner was fraudulently appointed on the post of Extremely Backward Caste whereas he belonged to the Backward Caste, at the relevant point of time. Learned counsel has also drawn the attention of the Court to copies of two caste certificates relating to the petitioner in which the number of the certificate is the same i.e., 446 but the date of issue is 28.02.2005 and 20.05.2005. Learned counsel submitted that in view of two caste certificates and in one there being overwriting bearing the same issue number, clearly shows that the petitioner has not come with clean hands.

Having considered the rival contentions, this Court does not find any merit in the present writ application. The pleadings in this case and copies of document brought on record, clearly indicate that the caste of the petitioner, undisputedly being *Kamkar*, could not have been Extremely Backward Caste and was a Backward Caste at the relevant time, which is apparant from the merit list prepared by the



Selection Committee. Further, to a specific stand on behalf of the respondent no. 12, in his counter affidavit, that two caste certificates bearing the same number but different dates have been produced by the petitioner, in the rejoinder filed on behalf of the petitioner, there is no denial to the same.

In view of the aforesaid and the fact that such employment of the petitioner, on a reserved post to which he did not belong at the relevant point of time as well as non denial of the assertion made in the counter affidavit of respondent no. 12 in which photocopies of the caste certificates issued in favour of the petitioner, which bear the same serial number but different dates, not being denied, in the considered opinion of the Court, the whole transaction of the employment of the petitioner itself was fraudulent. Once there is fraud, the entire consequence or resultant benefit accrued shall necessarily have to be withdrawn/cancelled and thus, the employment of the petitioner has rightly been cancelled in the facts and circumstances of the case. The contention of the petitioner that he had not been noticed is also falsified by the fact that specific notice had been given to the petitioner making him aware of the charges. Further, just because of efflux of time, since fraud cannot be perpetuated, the authorities taking corrective measure once having come to know of the fraud committed by the petitioner, cannot be said



to have acted arbitrarily or illegally.

For the reasons aforesaid, the writ petition stands dismissed.

It goes without saying that the concerned authorities shall fill up the post vacated by the petitioner expeditiously, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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