

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.187 of 2015

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1. Dharmendra Kumar Yadav son of Sri Ramjee Yadav, resident of village- Rampur
Ke Tola, P.S.- M.H. Nagar (Hasanpur), District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Government of Bihar, Patna
2. The Director, Primary Education, Department of Education, Government of
Bihar, Patna
3. The District Magistrate, Siwan
4. The District Education Officer, Siwan
5. The District Programme Officer, Establishment, Siwan
6. The Block Development Officer, Siswan, District- Siwan
7. The Block Education Extension Officer, Siswan, District- Siwan
8. The Headmaster, Government Middle School, Parari, Anchal- Siswan, District-
Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Anil Kumar Sinha, GA-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V JUDGMENT

Date: 31-01-2017

This writ petition has been filed praying for quashing the order dated 24.9.2014 passed by the District Teachers Employment Appellate Authority, Siwan in Appeal No. 403 of 2013 whereby the appellate authority has not chosen to interfere with the termination of the service of the petitioner as a Prakhanda teacher in Block- Siswan in the district of Siwan.

According to the petitioner, a selection process to appoint Prakhanda teachers was initiated in the year 2008 as against 145 vacant posts. The petitioner applied and was called for counseling in December, 2008, however this date is sought to be modified as



January 2009 subsequently. His certificates and testimonials were examined and found to be proper. Since no final appointment orders was being issued to any candidate that the matter reached the District Teacher's Employment Appellate authority, Siwan in Case No. 114 of 2011 and when under orders of the appellate authority appointments were made in phases which in total came to 145. The petitioner claims an appointment pursuant to such order vide Annexure-2 bearing No. 169 dated 1.6.2011 whereby the petitioner was informed about his selection as Prakhanda Teacher and consent was sought. The petitioner gave his consent and joined at the Government Middle School, Padari which was accepted by the Block Education Officer and the Headmaster vide Annexure-3 on 3.6.2011. According to the petitioner, it is under the orders of the appellate authority passed in Case No. 114 of 2011 that a verification of testimonials was carried out and a report was submitted by the Block Education Officer on 23.10.2011 holding the certificates of 30 teachers including the petitioner as forged or unacceptable and thus terminating their services. The name of the petitioner appears at Serial No.9. As per the petitioner, in view of the position reflecting from the order of the Block Education Officer present at Annexure-4, the matter was examined by the appointment committee and the entire selection itself was cancelled vide order passed on 2.1.2013. The petitioner feeling aggrieved filed C.W.J.C.No.3281 of 2013 and which was heard along



with several other writ petitions to be disposed of in terms of the order passed in C.W.J.C.No.1675 of 2013 and the order passed by the Block Development Officer- cum- Executive Officer dated 2.1.2013 was set aside. Surprisingly, the petitioner did not question the order present at Annexure-4 dated 23.10.2011 whereby his services were terminated doubting the certificates produced by him. Following the order passed by this Court in C.W.J.C.No.3281 of 2013, the petitioner filed a representation before the District Teachers Appointment Appellate Authority, Siwan for accepting the joining which was registered as Appeal No.403 of 2013 and the appellate authority on examination of the matter has rejected the claim of the petitioner on two grounds namely:

- (a) that the name of the petitioner does not find mention in the orders passed by the appellate authority from time to time in respect of the selection process in question; and
- (b) The name of the petitioner does not find mention in the list of 145 candidates submitted under the joint signature of the Block Education Officer and the Block Development Officer.

According to the appellate authority, since the name of the petitioner did not find mention in the list recommended by the appellate authority for appointment and despite the position an appointment order was issued in his favour, it was held to be contrary



and in the teeth of the order dated 21.2.2011 of the State Government. The appeal was dismissed and the petitioner feeling aggrieved is before this Court.

Mr. Sanjay Kumar has appeared for the petitioner while the State is represented by Mr. Anil Kumar Sinha learned G.A.1 assisted by Mr. Kumar Ravish learned A.C. to G.A.1.

Learned State counsel has produced the entire records of the selection process in question. It is under the orders of this Court passed on 6.9.2016 that a comprehensive supplementary counter affidavit has also been filed by the State on examination of the records and in which the entire sequence of events has been explained. It is accepted by the respondents that a selection process was initiated for appointment of Panchayat/Block teachers in 2008 as against 145 posts. It is also admitted that the application of the petitioner bearing Serial No. 1125 was received against trained category corresponding to Serial No. 466 of the merit list at the pre-counseling stage. Meaning thereby, there is no controversy that the petitioner was an applicant to the post. The dispute respondents raise is that while counseling in the selection process was carried out only on 24.1.2009 in which 817 candidates appeared, the petitioner did not appear. In other words, the claim of the petitioner of having participated in a counseling held in December, 2008 is contested as an incorrect statement. In fact it is after the judgment in this case was reserved that a supplementary



affidavit is filed by the petitioner claiming to have attended counselling on 24.1.2009.

There is nothing on record of the proceedings to confirm the claim of the petitioner of having participated in the counseling in December, 2008 or on 24.1.2009. In the circumstances and with nothing to contest the statement of the respondents that counseling was carried out on 24.1.2009 in which the petitioner did not participate, the stand of the respondents would have to be accepted. The petitioner has also not explained as to why despite his counseling having taken place, he never knocked the doors of the departmental authorities or the appellate authority or the courts for issuance of an appointment order. He also does not explain why he never chose to be a party to the Case no. 114 of 2011 instituted at the instance of dissatisfied contestants seeking appointment to the post. In fact the order passed by the appellate authority dated 12.5.2011 annexed at Annexure-1 to the writ petition very clearly mentions the foundation for the proceedings so instituted. It is on receipt of the letter no. 207 dated 21.2.2011 of the Principal Secretary, Human Resources Development Department, Government of Bihar for disposal of the matters relating to the second phase appointment in the Elementary Schools that the case in question was registered by the appellate authority giving rise to Case no. 114 of 2011 and during which course, the appellate authority on examination of the records of the



selection process has been pleased to issue order approving appointments in different phases, taking note of the date of the first counseling held on 24.1.2009 which has been placed on records by the respondents in the supplementary counter affidavit at paragraph 12 onwards.

It is mentioned that on 18.4.2011 the appellate authority approved the appointment of 50 candidates and directed the Employment Committee to issue offer of appointment to the said 50 candidates which order is present at Annexure-P. Vide order passed on 28.4.2011 similar orders were issued in respect of 37 candidates. It is stated that by order passed on 14.5.2011, the appointment in respect to the 23 candidates was approved and ultimately vide order passed on 12.5.2011 the appointment of 35 candidates were approved which order has been placed on record vide Annexure-1.

It is thus demonstrated that although under the orders of the appellate authority passed in Case No. 114 of 2011 from 18.4.2011 to 12.5.2011, 145 candidates qualified for appointment i.e. $50+37+23+35=145$ but neither the name of the petitioner figured in any of the list nor did he raise any claim thereunder.

I have heard learned counsel for the parties and I have perused the records.

The sequence of events leading to the writ petition and the reasons therefore stand explained hereinabove in this judgment. The



appointment of the petitioner is being questioned inter alia on grounds that:

(a) The claim of the petitioner of having participated in counseling held in December, 2008 or on 24.1.2009 is false;

(b) The offer of appointment dated 1.6.2011 present at Annexure-2 is a forged document;

(c) The petitioner never participated in the counseling held on 24.1.2009; and

(d) The orders passed by the Appellate Authority in Case No. 114 of 2011 does not include the name of the petitioner.

It is not in dispute rather it is an admitted position that the appointment of the Prakhanda Teachers in question, is engulfed in irregularities in the selection process followed. The records produced by learned State counsel does also confirm to this position. An F.I.R. also has been instituted as mentioned by the respondents at paragraphs 22 and 49 of the supplementary counter affidavit. The records produced by the learned State counsel itself raises suspicion on the procedure so followed.

Be that as it may, the fact remains that a selection process was initiated and appointments have been made under the regulatory control of the Appellate Authority. It is thus to be seen that in the nature of the dispute raised where the irregularities in the selection process, is admitted and the records produced do not give a very clear



picture as regarding the successful candidates, whether the case of the petitioner requires a consideration in the attending circumstances.

There is no dispute rather it is admitted that the petitioner was an applicant for the post of Prakhanda teacher and his name appears at Serial No. 1125 in the list of trained category applicant corresponding to serial No. 466 of the merit list as admitted by the respondent themselves in paragraph 9 of their supplementary counter affidavit.

It is again admitted that the name of the petitioner did not figure in the orders passed by the Appellate Authority in Case No. 114 of 2011 with effect from 18.4.2011 to 12.5.2011, which related to 145 candidates but then the petitioner does not claim appointment under those orders rather his offer of appointment is dated 1.6.2011 and it is the specific case of the respondents at paragraph 20 that some of the candidates whose names were approved by the Appellate Authority in the four orders passed in between 18.4.2011 to 22.5.2011, did not join. The Block Education Officer, Siswan submitted proposal for appointment of 10 candidates and which was approved by the Appellate Authority on 1.6.2011 except the recommendation of one Neshar Alam. The name of the petitioner does not figure here. It is at this stage that an offer of appointment was issued to the petitioner on 1.6.2011 placed at Annexure-2 and following which he gave his acceptance and joined on 3.6.2011. The appointment of the petitioner was quashed vide order of the Block Education Officer dated



23.10.2011 present at Annexure-4 along with 29 others inter alia, on charge of having obtained appointment on forged documents. According to the respondents, the offer of appointment at Annexure-2 dated 1.6.2011 is a forged document since the petitioner's name was never approved by the Appellate Authority. This order was not questioned by the petitioner before any forum rather an order passed two years thereafter on 2.1.2013 by the Block Development Officer quashing the selection process, was questioned by him in C.W.J.C.No.3281 of 2013 and some others relying upon an order passed in C.W.J.C.No.1675 of 2013 and which was disposed of in terms of the order passed in the said case. It is by virtue of the order passed on 23.10.2011 present at Annexure-4 that the vacancies so created were filled up under the orders of the Appellate Authority dated 5.11.2011 present at Annexure-12 as mentioned in the order. By the said order 11 appointments were approved.

The offer of appointment issued in favour of the petitioner present at Annexure-2 which is dated 1.6.2011, is being questioned on grounds that the order of the Appellate Authority dated 1.6.2011 present at Annexure-V to the supplementary counter affidavit does not contain the name of the petitioner. It thus remains unexplained as to how the petitioner has secured an appointment in absence of any document supporting his participation in counseling and in absence of any order of the Appellate Authority passed in Case No. 114 of 2011



approving his appointment. In fact, even though the petitioner has questioned the order dated 2.1.2013 of the Block Development Officer present at Annexure-Z/2 whereby the selection process was cancelled for the irregularities noted therein and which order though was set aside by this Court vide order passed in C.W.J.C. 1675 of 2013 but then the individual order passed against the petitioner charging him of securing appointment on forged documents dated 23.10.2011 has never been questioned by the petitioner and which has since attained finality.

Indisputably, the name of the petitioner does not figure in either of the orders passed by the Appellate Authority in Case No. 114 of 2011 on 18.4.2011, 28.4.2011, 4.5.2011 and 12.5.2011 whereby $50+37+23+35=145$ candidates were approved for appointment nor does the name of the petitioner appear in the subsequent orders passed by the Appellate Authority on 1.6.2011 and 5.11.2011 present at Annexures-V and W whereby 20 candidates were approved for appointment on the vacancies created by either non-joining of the candidates who have been approved in the first phase orders that is the orders passed between 18.4.2011 to 25.5.2011 or on account of vacancies that arose by termination of the services of the appointees secured on forged documents.

While the name of the petitioner does not figure in the orders passed by the Appellate Authority on 18.4.2011 to 12.5.2011 and



thereafter on 1.6.2011 yet he has been able to secure appointment on 1.6.2011 and the foundation is lacking. In fact, it is on discovering the fact that despite the name of the petitioner not having been recommended by the Appellate Authority in the orders passed until 1.6.2011 yet the petitioner secured an appointment on 1.6.2011 vide Annexure-2, that it was held to be forged appointment and quashed under the orders dated 23.10.2011 vide Annexure-4 which was never questioned by the petitioner. The statement of the respondents made in paragraphs 22 and 49 further reflects that criminal cases has been instituted on the irregularities complained of and the relevant documents are in possession of the Vigilance Department.

Despite the position discussed but since the petitioner was claiming parity with the case of Naresh Yadav (Annexure-5) and Nagendra Mishra(Annexure-14) that this Court while putting this matter on list on 19.1.2017 made a query from the State counsel on the issue of parity and whether there were any such appointees like the petitioner whose name did not figure in the counselling list but have been retained in service. Unfortunately for the petitioner both the queries were answered in the negative by learned State counsel who on verification of records informed that all the teachers who continue on their posts including Naresh Yadav and Nagendra Mishra figure in the counselling register and had attended counselling.

In the undisputed circumstances discussed above, the order



passed by the Appellate authority dated 24.9.2014 passed in Appeal No. 403 of 2013 put to question in this writ petition suffers no infirmity requiring any interference.

The writ petition is dismissed.

(Jyoti Saran, J.)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
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