

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1220 of 2014
IN
Civil Writ Jurisdiction Case No. 5894 of 2006**

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Shaheda Quamer W/o Qaiyoum Uzzaman Resident of Mohalla- Muslim Road,
P.S.- Nawadah, District- Nawadah

.... Appellant/s

Versus

1. The State of Bihar
2. The Director, Secondary Education, Bihar, Patna
3. The Secretary, Vidyalaya Sewa Board, Bihar, Patna
4. The District Education Officer, Nawadah
5. The Secretary, Bihar Staff Selection Commission, Bihar, Patna
6. The Secretary, Iraqui Urdu Girls High School, Ansari Nagar, P.S. Nawadah
Town, P.S.+District- Nawadah

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Rajeev Kumar Singh, Advocate Mr. Mukesh Kumar Singh, Advocate Mr. Rishi Raj, Advocate
For the Respondent/s	:	Mr. Indeshwari Prasad Mandal, AC to GA-3
For the BSS Commission:	:	Mr. Prabhat Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-04-2017

Heard learned senior counsel for the appellant and
counsel appearing on behalf of the State.

Since the Learned Single Judge has dismissed the writ
application of the appellant on 29th of October, 2009, refusing to give



any direction to approve the service of the appellant as an Assistant Teacher of Farsi in Urdu Iraqi Girls School, Nawadah as also the decision of the Commission, dated 29.04.2006, which refused to give approval of service of the appellant, the present Letters Patent Appeal came to be filed against the decision of the Learned Single Judge.

Prior to this, an effort was made, seeking a review of the decision, which too was dismissed on 12th of January, 2011. Against the said order, another Letters Patent Appeal No. 428 of 2011 was moved. The Division Bench dismissed the said Letters Patent Appeal on 25.09.2012, holding that the appeal was not maintainable.

The appellant thereafter moved the Hon'ble Supreme Court where the SLP was dismissed on 14.07.2014 and now yet another valiant effort is being made against the order passed by the Learned Single Judge in the writ application, namely, C. W. J. C. No. 5894 of 2006.

The learned senior counsel, representing the appellant has tried to make an effort to demonstrate before this Court that the decision of the authorities refusing to give approval / recognition to the service of the petitioner, despite knowing fully well that the appellant has worked in the capacity of an Assistant Teacher for a long period of time of almost 22 years, is bad in law. The writ application was dismissed without appreciating the true background



and the reason for appointment of the appellant as an Assistant teacher in Farsi.

Since a lot of effort and labour has already gone into the adjudication made by the Learned Single Judge in the order passed in the writ application and the narratives on those submissions emerge from reading of the decision, especially the relevant portion, starting from para 15, the Court would like to quote the said observation of the Learned Single Judge, which crystallizes the entirety of the dispute and the reason for refusal grant to relief:

“15. Learned counsel for the respondent-State and the Commission on the other hand submitted that the said letter dated 852 dated 21.12.1982 lost its force and applicability after the said 1983 Rules came in force. In the said Rules specific qualification was laid down for teachers of Ancient subjects, as will be evident from extract of the Rules annexed as Annexure-D with the counter affidavit of respondents 3 & 5. Since the issue of qualification for eligibility of the petitioner at the time of her appointment is the bone of contention, the said stipulation in the Rules as appearing from Annexure-D is quoted hereinbelow:-

“प्राच्य शिक्षक :-

किसी मान्यता प्राप्त विश्वविद्यालय अथवा राज्य सरकार द्वारा मान्यता प्राप्त बोर्ड/समिति द्वारा प्रदत्त आचार्य (साहित्य अथवा व्याकरण) फाजिल (अरबी अथवा फारसी के डिग्री/डिप्लोमा अथवा संस्कृत/फारसी/अरबी में एम0ए0 /आनर्स एवं प्रशिक्षित।

टिप्पणी – आचार्य/फाजिल उम्मीदवारों की नियुक्ति के मामले में किसी मान्यता प्राप्त विश्वविद्यालय या राज्य सरकार द्वारा मान्यता प्राप्त बोर्ड अथवा राज्य सरकार के शिक्षा विभाग द्वारा प्रदत्त शिक्षक प्रशिक्षण डिग्री/डिप्लोमा प्रमाण-पत्रधारी को अधिमान्यता प्राप्त होगी।”

16. From bare reading of the above quoted stipulation of the Rules shows that degree of Fazil from any



Government recognized Board or University, or degree of M.A. or Honours in the subject, along with qualification of training was the requisite qualification for appointment as Assistant Teacher in Ancient subjects during the relevant period. It is an admitted position that the petitioner was neither having a Fazil degree nor a degree of M.A. in Farsi nor a degree of B.A. (Hons.) in Farsi. This is also an admitted position that she had no qualification of training which was essential in either of the contingencies. Thus it is apparent that at the time of her appointment petitioner was neither qualified subject-wise for appointment nor she had the requisite qualification of training. Hence, it is clear that the respondent Commission has applied its mind to the relevant provisions of law for rejecting the approval of services of the petitioner and no fault can be found out in the said impugned communication (Annexure-19) containing the resolution of the Commission in this regard.

17. The contention of the learned senior counsel for the petitioner that, prior to the said rejection, no notice was issued to the petitioner and, therefore, there has been a violation of Principles of Natural Justice in the case, is also unfounded since the appointment of the petitioner itself was subject to approval by the Board (now the Commission) which has been rejected by the Commission after going through the overall aspect of the matter as presented to it repeatedly by the respondent D.E.O., the Secretary of the school as well as the petitioner herself through her representation contained in Annexure-18.

18. Had it been that the only infirmity in the petitioner's appointment was her lack of qualification and eligibility for appointment, this Court, on equitable considerations, and in the light of the orders of this Court relied upon by learned senior counsel for the petitioner, may have directed the respondents to continue with the services of the petitioner. However,



as the records show, there are circumstances which dissuade this Court from exercising its equitable jurisdiction in favour of the petitioner. The entire case of the petitioner and the respondent Secretary of the college is that petitioner was appointed pursuant to an advertisement and selection process and she was working in the school since 1.3.1984. The translated copy of the advertisement is annexed by the petitioner as Annexure-1 and her appointment letter as Annexure-2. A mere glance to Annexure-1 shows that the last date of submission of applications fixed by the advertisement was 24.2.1984 and it was notified that the interview shall be held on 6.3.1984 in the school. It is shocking to notice from Annexure-2 that, merely two days after the last date of receipt of applications, petitioner was appointed as Farsi Teacher and she was directed to join within three days. Besides, consistent case of the petitioner, as well as of the Secretary of the school, is that petitioner was working in the school from 1.3.1984. This shows that even before the application of the candidates could be scrutinized for their interview on 6.3.1984, petitioner was appointed and permitted to join. This clearly falsifies the claim of the petitioner and that of respondent Secretary of the school that the appointment of the petitioner was pursuant to an advertisement and a selection process. The respondents have pleaded that since no better candidate was available with higher qualification petitioner was appointed. No details of the same have been furnished by the petitioner or the respondent Secretary of the School in support of the same. On the other hand as noticed above, it is apparent that the petitioner was appointed and allowed to join in the school even prior to the holding of such interview. This shows that the entire selection process adopted by the management of the school was a farce and may be only a paper transaction to build-up a case for the petitioner, or it may be that, after advertisement, deliberately, to



frustrate the selection process, and to deny consideration to any other candidate, petitioner was, in a planned way, appointed in a hurry and allowed to join. A bonafide act of an employer, committing irregularities in appointment of an incumbent and continuing him for long may invite equitable consideration by this Court in a given case. But that is not the case here. One solitary conduct of the Managing Committee, appointing petitioner prior to the date of interview, when the same had already been announced, and thereafter claiming that petitioner was the best available candidate, shows its malafide.

19. Moreover in Annexure-2 it is mentioned that the post of Farsi Teacher in the school was a sanctioned unit which also stands contradicted by the report of the Secretary of the school as contained in Annexure-5. It shows that there were total 9 units sanctioned in the School, including the post of Head Mistress which does not mention about any sanctioned post of Urdu teacher available in the school, vacant or otherwise. It has been mentioned in the said letter and it has been clarified thereafter that one Ishrat Bano was appointed in the school as Home Science teacher and thus a post stood sanctioned. Thus it was shown that all the 9 units in school were filled-up.

20. However, it was explained that one Roshan Ara Khalil who was appointed as Urdu Teacher was absent and hence the said Ishrat Bano who had in the meanwhile acquired the teachers training qualification from Arabi Research Institute and was also B.A. (Hons.) in Urdu was shifted by the management in place of Roshan Ara Khalil as Urdu Teacher and one Unmool Khair was appointed as Home science teacher in her place. In the circumstances from discussion made in Annexure-5, it is not at all clear how petitioner was appointed in the School as Farsi teacher and on which sanctioned vacancy.

21. In the circumstances, it is beyond comprehension of



this Court as to how recommendation was made by the Secretary of the school for approval of services of petitioner, who was said to be a temporary Farsi Teacher claimed to be working against the said 9th unit, which was a post of Home Science teacher. These all show that the management of the school was manipulating affairs of the School and creating records from the very beginning to, somehow, take in the petitioner in the School with open disregard to the law and established procedure.”

This Court has nothing more to add to the observation and decision of the Learned Single Judge as to how the appellant came to be appointed without the requisite qualification, a farce of an advertisement, the manipulated selection process, the effort to accommodate the appellant on one post or the other by juggling around with other valid appointees in the school and the fact that there was no post for a Farsi Teacher in the school, on which the appellant could be appointed in the very first place.

With all these findings, loaded against the appellant and nothing in terms of evidence has emerged even in the Letters Patent that such findings are either contrary to record or evidence, which has gone into the decision making, the Learned Single Judge was left with no option but to refuse any relief to the appellant and dismissal of the writ application was the natural corollary.

Despite a detailed consideration and hearing, this Court has not been able to appreciate as to what consideration and ground the impugned order is required to be interfered with.



Appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

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