

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1726 of 2016

Uma Nath Singh Son of Late Tribhuvan Singh @ Tribhuan Singh resident of village & Post Naini, P.S. Chapra Muffasil, District - Saran at Chapra

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat, Vikas Bhawan, Patna
3. The Director, Primary Education, Human Resources Development Department, Government of Bihar, New Secretariat, Vikas Bhawan, Patna
4. The Regional Deputy Director of Education, Saran Division, Chapra
5. The District Education officer, Saran, District Saran at Chapra
6. The District Programme officer (Estt.), Saran, District - Saran at Chapra
7. The District Treasury officer, Saran, District Saran at Chapra
8. The Block Education officer, Block - Jalalpur, District - Saran at Chapra
9. The Headmaster, Government Basic School, Bangra, Block & P.S. Jalalpur, District - Saran at Chapra

.... Respondents

with

Civil Writ Jurisdiction Case No. 2428 of 2016

Rajendra Kumar Singh, son of late Lal Govind Singh, resident of village Naini, P.S. Chapra Muffasil, District Saran at Chapra

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary
2. The Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The Special Director, Primary Education, Bihar, Patna
5. The Regional Dy. Director Education, Saran Division, Chapra
6. The District Education Officer, Siwan
7. The District Programme Officer, Siwan
8. The Headmaster Govt. Basic School, Rampur, Noon Nagar, Saran at Chapra

.... Respondents

Appearance :

(In CWJC No.1726 of 2016)

For the Petitioner/s : Mr. Nityanand Mishra, Adv.

For the Respondent/s : Mr. Vikash Kumar, Sc-11
Mr. Sriram Krishna, AC to SC-11

(In CWJC No.2428 of 2016)

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.

For the Respondent/s : Mr. Raman Naik, AC to AAG-10

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 09-05-2017



The two petitioners herein are aggrieved by their respective order of termination and the ground assigned in each of such orders is that the petitioners were over age for appointment as Assistant Teacher at the time of initial appointment. An additional charge faces the petitioner in C.W.J.C.No. 1726/2016, of interpolating his total marks in teachers training qualification by reducing it from 1500 to 1400 for gaining advantage in calculation of percentage.

While the petitioner in C.W.J.C.No. 1726/2016 has prayed for issuance of writ in the nature of Certiorari for quashing the order bearing Memo No. 826 dated 26.11.2015, impugned at Annexure 15 to the said writ petition passed by the Regional Deputy Director of Education, Saran Division, at Chapra, whereby he has been dismissed from service, a similar order of termination has been questioned by the petitioner in C.W.J.C.No, 2428/2016 passed by the same authority bearing Memo No. 827 dated 26.11.2015, which is impugned at Annexure 20 to the second writ petition.

Since the issue raised in each of the writ petition is almost overlapping, hence the two writ petitions have been heard together and with the consent of the parties are being disposed of at the stage of admission itself.

C.W.J.C.No. 1726/2016

The petitioner is a Matriculate and also passed the Primary



Teachers Training examination. Following the advertisement issued in the year 1988 inviting applications that the petitioner responded and was issued an interview letter bearing No. 376 dated 3.3.1989, a copy of which is placed at Annexure 4 to the writ petition, requiring his presence on 15.3.2009 alongwith his testimonials by the Regional Deputy Director of Education, Saran Division, Chapra. The petitioner appeared in the interview, his documents were verified and an appointment order was issued bearing Memo No. 200 dated 31.1.1991, a copy of which is placed at Annexure 5. The Regional Deputy Director of Education after verification of the certificates of the petitioner granted approval for payment of salary of the petitioner vide letter dated 18.2.1992, a copy of which is present at Annexure 6. A list of teachers was forwarded by the Regional Deputy Director of Education to the District Education Officer on 15.6.1992 and the name of the petitioner Uma Nath Singh as well as other petitioner Rajendra Kumar Singh does appear in the list so forwarded by the Regional Deputy Director of Education on 5.6.1992 at running page 31. The Matriculation certificate of the petitioner was got verified and the Chief Vigilance Officer vide his report dated 16.1.1999 confirmed its genuineness vide Annexure 8. The name of the petitioner Uma Nath Singh appears at serial no. 27. The petitioner thereafter was working to the satisfaction of all concerned when his appointment alongwith other teachers was questioned by the two persons, namely,



Bhagwan Singh and Kashi Nath Singh, who filed two writ petitions giving rise to C.W.J.C.No. 8942/2001 and C.W.J.C.No. 10212/2001. The grievance of these persons was that they were wrongly denied appointments. On directions issued by a Bench of this Court, that a vigilance enquiry was held, reporting alleged irregularity in appointments and in so far as the petitioner is concerned, he was held to be over age on the date of appointment. A Bench of this Court in consideration of the vigilance report directed the Superintendent of Police (Vigilance) to forward the report to the Department of Primary Education and the Principal Secretary, Human Resources Department, was directed to personally examine the matter as well as future course of action. The two writ petitions were accordingly disposed of.

It is following the directions issued by this Court and the advisory issued by the Principal Secretary, Education Department, dated 19.12.2014 that the Regional Deputy Director of Education, Saran Division vide order bearing Memo No. 06 dated 5.1.2015 initiated disciplinary proceeding by serving a charge sheet, which inter alia charges the petitioner of being over age at the time of initial appointment and/or manipulation of his total marks in Teachers Training qualification to gain advantage of percentage in its calculation. The order initiating proceeding dated 5.1.2015 of the Regional Deputy Director of Education is at Annexure 10 and the charge sheet is at Annexure 11. The petitioner submitted his reply



rejecting the contentions by submitting that the preparation of panel is entirely the job of the office and that the petitioner had no role in its construction. In so far as the issue of over age is concerned, the petitioner relied upon the departmental circular bearing No. 455 dated 15.12.1979 and circular No. 1365 dated 18.6.1981, to submit that the power to relax the age was present. The petitioner also enclosed his handicapped certificate. The Enquiry Officer submitted his report present at Annexure 16 exonerating the petitioner of the charges, a copy of which is enclosed at Annexure 16 to the rejoinder to the counter affidavit. Even the Presenting Officer did not choose to contest the stand of the petitioner. The petitioner was served with the second show cause on 13.10.2015 vide Annexure 13. A reply was filed by the petitioner vide Annexure 14 but which has not satisfied the Regional Deputy Director of Education to result in the order of termination bearing Memo No. 826 dated 26.11.2015 impugned at Annexure 15 to the writ petition. Feeling aggrieved the petitioner is before this Court.

C.W.J.C.No. 2428/2016

The petitioner responded to an advertisement dated 9.8.1988 published in the newspapers inviting application for appointment to the post of Assistant Teacher in Govt. Basic Schools of the State, a copy of which is enclosed at Annexure 1 to the writ petition. The petitioner fulfilled all criteria for such appointment and thus, received



an interview call letter bearing No. 376 dated 3.3.1989 issued under the signature of the Regional Deputy Director of Education requiring his presence on 17.3.1989 vide Annexure 2. The petitioner is a handicapped. The testimonials of the petitioner are enclosed at Annexures 3 series. Vide Annexure 5 the petitioner was directed to produce his testimonial for verification on 10.1.1991 by the Regional Deputy Director of Education. The respondent Regional Deputy Director of Education being satisfied by the eligibility of the petitioner to hold the post issued appointment order bearing Memo No. 199 dated 31.1.1991, a copy of which is enclosed at Annexure 6 to the writ petition.

A cursory glance to the certificates enclosed at Annexures 3 series read alongside directive issued by the Regional Deputy Director of Education requiring its production vide Annexure 5 would confirm that the Regional Deputy Director of Education was in full knowledge of the educational as well as age qualification of the petitioner and it is on being satisfied that the appointment order at Annexure 6 was issued. The petitioner accordingly joined his place of posting and it is two years thereafter that a second verification took place on 11.2.1993 as confirmed from the letter of the Assistant Secretary present at Annexure 7. It is on being satisfied on the eligibility to hold the post that the Regional Deputy Director of Education, Saran Division vide letter bearing Memo No. 1590 dated 29.3.1993 issued orders for



release of salary of the petitioner. On a query made by the District Education Officer as to the date of birth of the petitioner, the Vigilance Officer of the Board informed his date of birth as 25.1.1957 vide Annexure 9. An explanation was sought from the petitioner vide Memo dated 30.7.1999 of the District Education Officer present at Annexure 10 requiring the petitioner to explain as to how he managed appointment on a forged certificate. The Director, Primary Education at the same time vide letter No. 574 dated 8.7.1999 directed for termination of service of the petitioner after following the due process in view of alleged forgery detected. The order of the Director was questioned by the petitioner in C.W.J.C.No. 7036/1999 before this Court and while the matter was pending that the enquiry so directed drew in favour of the petitioner and his order of termination was recalled. As a result, the writ petition so filed by the petitioner bearing C.W.J.C.No. 7036/1999 was disposed of on 6.11.2003. Copies of the order dated 28.9.1999 recalling the termination order and the order disposing of the writ petition are enclosed at Annexures 11 series. The petitioner has thereafter been granted first and second ACP vide memo dated 4.5.2008 and vide Memo dated 24.8.2013. It is alongside that the appointments so made were questioned by the two persons, namely, Bhagwan Singh and Kashi Nath Singh by filing the writ petitions bearing C.W.J.C.No. 8942/2001 and C.W.J.C.No. 10212/2001 respectively.



It is in the light of the order so passed by this Court in the said writ petitions that a three-Member Committee was constituted by the Director, Primary Education bearing Memo No. 1537 dated 24.10.2013 and the three-Member Committee submitted its report before the Principal Secretary, Education Department, who vide letter dated 19.12.2014 directed the Regional Deputy Director of Education to examine the matter and pass appropriate orders. The petitioner was served with a charge sheet vide Memo No. 05 dated 5.1.2015 of the Regional Deputy Director of Education, impugned at Annexure 15, charging him of being over age on the date of appointment. The petitioner filed his reply vide Annexure 17 reiterating that his date of birth was 25.1.1957 and in response to the charge of being over age, the petitioner relied upon the departmental circular dated 15.12.1979 allowing relaxation of age. In the circumstances discussed the Enquiry Officer submitted his report which again forms part of Annexures 17 series exonerating the petitioner of the charges and even the Presenting Officer did not chose to contest the stand of the petitioner. The petitioner was served with a second show cause vide Annexure 18. The reply of the petitioner is at Annexure 19 and not being satisfied that the termination order has been passed vide Memo No. 827 dated 26.11.2015, impugned at Annexure 20. Feeling aggrieved the petitioner is before this Court.

Since the facts accompanying two cases in hand are almost



the same, I would refer to the pleadings and annexures as occurring in C.W.J.C.No. 1726/2016 unless clarified with specific reference to other writ petition.

Mr. Bindhyachal Singh, learned counsel has appeared on behalf of the petitioner in each of the two cases. While the State is represented by Mr. Sriram Krishna, AC to SC-11, who has contested the stand in C.W.J.C.No. 1726/2016, Mr. Raman Naik, AC to AAG-10 argued on behalf of the State in C.W.J.C.No. 2428/2016.

Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner, has submitted that the allegation of interpolation of total marks by the petitioner Uma Kant Singh is based on no evidence, rather the evidence is to the contrary because the panel so prepared is the work of the departmental staff and not the petitioners. He submits that an error committed by the person in-charge of preparation of the panel cannot be a foundation for the order of termination. In so far as the issue of two petitioners being over age at the time of initial appointment is concerned, learned counsel submits that each of the two petitioners are handicapped and there are clear stipulations present in the circular of the State Government vesting powers of relaxation. Learned counsel in reference to the advisory issued by the Education Commissioner bearing Memo No. 4557 dated 15.12.1976 enclosed at Annexure 'A' to the supplementary counter affidavit of the State filed in C.W.J.C.No. 1726/2016 has submitted that Clause



3(2)(ए) of the Advisory grants power of relaxation to the Regional Deputy Director of Education and it is in exercise of such power that the Regional Deputy Director of Education has given age relaxation to a number of teachers, a copy of which has been enclosed by the petitioner alongwith his reply filed before him vide Annexure 12 to the writ petition at running page 53, which is an order bearing Memo No. 3048 dated 20.12.1988 of the Regional Deputy Director of Education, Saran Division, Chapra. According to the learned counsel, where on principles the Regional Deputy Director of Education has applied departmental circular bearing Memo No. 4557 dated 15.12.1976 to grant age relaxation to similarly situated teachers, there cannot be a differential attitude in so far as the petitioners are concerned for it would amount to discrimination. Learned counsel has referred to the vigilance enquiry report, a copy of which is present at Annexure 'A' to the counter affidavit and with particular reference to running page 86 of the report he submits that the only imputation against these two petitioners is that they were over age on the date of appointment and nothing beyond.

The arguments of the learned counsel have been contested by the learned counsel for the State to submit that the circular relied upon is not applicable to the Basic Schools who are in fact guided by the Rules present at Annexure 'C' which does not provide for any age relaxation. According to the learned counsel, if these petitioners were



over age on the date of initial appointment, their appointment itself is void and mere continuance cannot enure to their benefit.

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

The individual facts of the case has already been discussed by me at the outset and which would confirm that the appointment of the petitioners is an outcome of an exhaustive selection process. It is not merely on an application that the appointments were made rather the eligibility of the petitioners has been tested time and again and which is manifest from the repeated directions issued by the Regional Deputy Director of Education requiring these applicants to be present with their testimonials. The eligibility of the two petitioners on their educational qualification as well as age criteria was thus to the full knowledge of the respondents. The documents would also confirm that the petitioners had very clearly disclosed their certificates which were also duly verified by the authorities.

As I have already indicated above, while the petitioner Uma Nath Singh faces allegation of being over age at the time of initial appointment as well as for alleged interpolation of his total marks obtained in Teachers Training examination, in so far as the petitioner Rajendra Kumar Singh is concerned, he is being unsuited only on age qualification. The vigilance enquiry report at Annexure 'A' dated 24.2.2014 which forms part of the vigilance report, does confirm this



position. The three-Member enquiry report also confirms that no documents were available with the department to carry out any enquiry rather it is on the basis of the documents supplied by the teachers that the opinion has been formed. While the enquiry report of Uma Nath Singh is present at Annexure 16 to his writ petition, the report of Rajendra Kumar Singh is present at Annexure 17 to his writ petition and in each of the two cases, neither the Presenting Officer has contested the position nor the Enquiry Officer has found any reason to doubt the stand taken by the petitioner that it is in the light of enabling powers vested in the Regional Deputy Director of Education to grant age relaxation that they have been appointed. The reply of the petitioner Uma Nath Singh at Annexure 12 also encloses an office order bearing Memo No. 3048 dated 20.12.1988 when the Regional Deputy Director of Education, Saran Division has himself exercised powers as vested in him under the departmental letter No. 455 dated 15.12.1979 and letter no. 1365 dated 18.6.1981 to grant age relaxation to eight teachers.

In my opinion this single instance is enough to conclude the matter in favour of the petitioner because the respondents cannot be allowed to be selective in matters of grant of age relaxation. In fact it is upholding such stand of the petitioner that the Enquiry Officer has exonerated these petitioners of all allegations but it did not suit the Regional Deputy Director of Education who himself is an author of



age relaxation as manifest from his order dated 20.12.1988 present at running page 53 in C.W.J.C.No. 1726/2016.

In so far as the charge of alleged interpolation of total marks is concerned, in my opinion it is an absurdity to hold the petitioner responsible for preparation of a list which undisputedly has been done by the staff of the department and not the petitioner. In fact the allegation is based on no evidence rather the Enquiry Officer in his report present at Annexure 16 to C.W.J.C.No. 1726/2016 has mentioned that while the certificate deposited by the petitioner shows that the total marks have been calculated against 1500, it is error committed by the person preparing the merit list, who has recorded the total marks as 1400. This position has also not been disputed by the Presenting Officer.

For the reasons so discussed, while this Court is satisfied that these two petitioners coming under the handicap category were entitled to age relaxation on the same terms as being granted to the teachers whose name finds mention in the order of the Regional Deputy Director of Education dated 20.12.1988 present at running page 53, in so far the allegation of interpolation is concerned, it is resting on no evidence.

The order of termination passed by the Regional Deputy Director of Education impugned in the two writ petitions is without application of mind because it mechanically proceeds to confirm the



allegation without bothering to examine the stand taken by each of the two petitioners in their reply as well as the opinion of the Enquiry Officer. The other gross procedural infirmity in the proceedings is that even though the Regional Deputy Director of Education has disagreed with the Enquiry Officer and although he served a second show cause on the petitioners but there is no disagreement note as provided under Rule 18(2) and (3) of 'the Disciplinary Rules'.

Another aspect of the matter which transpires from the case of Rajendra Kumar Singh is that these very issues did arise in his case even earlier when he was forced to come before this Court in C.W.J.C.No. 7036/1999 but good sense prevailed in the mind of the Regional Deputy Director of Education who after holding an enquiry recalled the order of termination resulting in disposal of the writ petition accordingly vide Annexures 11 series to the said writ petition bearing No. 2428/2016.

In my opinion, the respondent Regional Deputy Director of Education has unnecessarily got swayed in the matter to pass the order of termination without bothering to appreciate whether or not circumstances were existing in the case of these petitioners inviting a termination. There is a vast difference where any appointment suffers a procedural irregularity qua an appointment which is void ab initio. When the appointment of an incumbent is void ab initio certainly his continuance on the post cannot have a bearing but the case of the



petitioners herein does not fall in the said category. It is a clear case where an age relaxation was granted to a number of teachers and was equally extendable to these petitioners as well and which was also well within the powers vested in the Regional Deputy Director of Education as confirmed from the advisory present at Annexure 'A' to the counter affidavit filed in C.W.J.C.No. 1726/2016.

For the reasons so discussed, the order bearing Memo No. 826 dated 26.11.2015 passed by the Regional Deputy Director of Education, Saran Division, Chapra, impugned at Annexure 15 to C.W.J.C.No. 1726/2016, and Memo No. 827 dated 26.11.2015 passed by the same authority, impugned at Annexure 20 to C.W.J.C.No. 2428/2016 cannot be upheld and are accordingly quashed and set aside. The petitioners stand restored to their respective post with all consequential benefits.

The two writ petitions are allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	12.01.2017
Uploading Date	23.05.2017
Transmission Date	NA

