

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5345 of 2016

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Madan Prasad son of late Dinanath Prasad Resident of Village- Raghunathpur, PS
Raghunathpur, District Siwan.

... 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 Deputy Director of Education, Saran Division, Chapra
6. The District Education officer, Saran, at Chapra
7. The District Education Officer, Siwan
8. The District Programme Officer, Saran, at Chapra
9. The District Programme Officer, Siwan
10. The Headmaster, Govt. Basic School, Ander, Siwan

.... Respondents

with

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Civil Writ Jurisdiction Case No. 18123 of 2016

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Kedar Nath Singh Son of Sri Sheopujan Singh resident of village - Rampur
Khoram, Police Station Marhowrah, District - Saran at Chapra

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The Special Director, Primary Education, Government of Bihar, Patna
5. The Regional Deputy Director of Education, Saran Division, Chapra
6. The District Education officer, Saran, Chapra
7. The District Programme officer, Saran, Chapra
8. The District Programme officer, Gopalganj

.... Respondents

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Appearance :

(In CWJC No.5345 of 2016)

For the Petitioner/s : Mr. Samir Kumar Singh, Adv.
Mr. Ravi Ranjan, Adv.

For the Respondent/s : Mr. Ravi Verma, AC to GP-4
(In CWJC No.18123 of 2016)

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
For the Respondent/s : Mr. Prabhakar Jha, GP-27

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 22-05-2017



The petitioners in these two writ petitions have questioned the respective termination orders passed by the Regional Deputy Director of Education (hereinafter referred to as 'the RDDE'), Saran Division, Chapra, inter alia, on grounds that they figured down below in the merit list so prepared and thus, their appointment to the post of Assistant Teacher was marked with irregularity. While the petitioner Madan Prasad in C.W.J.C.No. 5345/2016 has questioned his termination order bearing Memo No. 840 dated 4.12.2015 passed by the RDDE, impugned at Annexure 13 to the said writ petition, the petitioner Kedar Nath Singh in a similar manner has questioned his termination order bearing Memo No. 550 dated 16.7.2016 passed by the same authority, impugned at Annexure 16 to C.W.J.C.No. 18123/2016.

Since the termination order passed in the case of each of the two petitioners rests on identical grounds i.e. whereas their names figured much below in the panel and was not within the merit list of 150 candidates, yet they have indulged in irregularities to secure an appointment and it is for this reason that both the writ petitions have been heard analogous and with the consent of the parties are being disposed of at the stage of admission itself.

For the sake of convenience I shall be referring to the pleadings and annexures as occurring in C.W.J.C.No. 5345/2016 unless clarified with specific reference to the second writ petition.



The facts of the case leading to the impugned orders briefly stated is that an advertisement was issued by the State Government in the office of the Director, Primary Education, inviting applications from the intending candidates for appointment to the post of Assistant Teachers in Matric trained scale in Government Basic Schools on 9.8.1988, a copy of which has been enclosed at Annexure 1 to the writ petition. Clause- 3 of the advertisement prescribes age for making such application with due relaxation given to the candidates coming under Scheduled Caste, Scheduled Tribe and women category. While the age prescribed for general candidates was fixed in between 18 years to 30 years as on 1.8.1988, the maximum age was relaxed for reserved category candidates to 35 years. It is not in dispute that these petitioners were within the prescribed age and were also Matric trained. While the petitioner Madan Prasad comes under Backward category, the petitioner Kedar Nath Singh belongs to general category.

Interview call letters were issued to the petitioners dated 3.3.1989 enclosed at Annexure 2 to C.W.J.C.No. 5345/2016 and Annexure 1 to the supplementary affidavit filed in C.W.J.C.No. 18123/2016. The two petitioners presented themselves for interview together with their testimonials on the date fixed.

According to the petitioners, a panel was prepared on the basis of marks obtained by the candidates in their Matriculation Examination as well as in the Teachers Training Examination and it is



on completion of such formality and finding the petitioners eligible for appointment that the appointment orders were issued bearing Memo No. 257 dated 31.1.1991 in so far as the petitioner Madan Prasad is concerned, enclosed at Annexure 6 to the writ petition and appointment order bearing Memo No. 3004B dated 30.4.1991 was issued in the case of the petitioner Kedar Nath Singh, enclosed at Annexure 5 to the 2nd writ petition. It is the case of these petitioners that since after their joining on the respective posts they have worked to the satisfaction of all concerned with no complaints and during which course their appointment has also been put to scrutiny as is confirmed from Annexure 7 to C.W.J.C.No. 18123/2016 which is a letter dated 12.5.1993 issued from the office of the Lokayukta to the Human Resources Department as regarding an enquiry into the appointments. By a subsequent letter dated 1.9.1993 the office of the Director (Primary Education) has informed the Regional Deputy Director of Education present at running page-39 to C.W.J.C.No. 18123/2016 that 68 teachers have been found to satisfy the stipulations and the name of the two petitioners would appear at serial No. 13 at running page-40 of the said writ petition while that of the petitioner Kedar Nath Singh appears at serial No. 72 at running page-44. While the name of the petitioner Madan Prasad appears amongst teachers appointed in Gopalganj district, the name of the petitioner Kedar Nath Singh figures amongst the teachers of Saran district.



According to these petitioners, they having been put to scrutiny and nothing found wrong in their respective appointments, there was no occasion to interfere with their appointment thereafter.

It is the case of the petitioners that after a decade of their respective appointments that the two persons claiming to be applicant for the post filed writ petitions in this Court giving rise to C.W.J.C.No. 8942/2001 (Bhagwan Singh v. the State of Bihar & ors.) and C.W.J.C.No. 10212/2001 (Kashi Nath Singh v. the State of Bihar & ors.) raising grievance that they have been wrongfully denied appointment. The two writ petitions came up for consideration before a Bench of this Court and vide order passed on 24.8.2011 the Bench directed for vigilance enquiry into the grievance so raised. It is the case of these petitioners that during the course of enquiry they presented their documents. The report of the vigilance is placed on record at Annexure 8 to C.W.J.C.No. 5345/2016 and reference to these petitioners can be found at running page-50 in so far as the petitioner Madan Prasad is concerned and running page-47 in so far as the petitioner Kedar Nath Singh is concerned. While the opinion of the vigilance in respect of Madan Prasad is that he has been awarded marks lower than actually obtained by him, in so far as the petitioner Kedar Nath Singh is concerned, the allegation is that his marks in the Matriculation and Teachers Training qualification have been enhanced. The vigilance enquiry has led to institution of a vigilance



case alleging irregularities in appointment and preparation of merit list with 30 named accused. The petitioners do not figure amongst the 30 named accused although the allegation of irregularities finds mentioned in the report. According to the petitioners, the High Court directed the Superintendent of Police (Vigilance) to forward the report to the Department of Primary Education and the Principal Secretary, Human Resources Development Department was directed to examine the same as well as the future course of action. The writ petitions so preferred by the two aggrieved persons was disposed of accordingly without any relief to the said writ petitioners.

Alongside the Regional Deputy Director of Education submitted his report before the Director, Primary Education in the light of the order passed by this Court on the two writ petitions referred to above, a copy of which has been enclosed at Annexure 8 to C.W.J.C.No. 18123/2016 and in so far as these petitioners are concerned, the name of Madan Prasad appears at serial no.2 and the petitioner Kedar Nath Singh appears at serial no. 13 and in each of the two cases the only allegation made is that their position in the merit list was beyond 150 persons.

According to the petitioners, it is in the light of the direction issued by the Principal Secretary, Human Resources Development Department, as contained in his letter dated 19.12.2014 addressed to the Regional Deputy Director of Education, Saran Division, Chapra



for taking appropriate steps for termination of appointment of the teachers, who had secured appointment by adopting irregular methods that a charge memo was served on the petitioners vide Annexure 10 to C.W.J.C.No. 5345/2016 and Annexure 11 to the 2nd writ petition. The petitioners replied to the charges by filing their replies refuting the allegation. The enquiry report in so far as the petitioner Madan Prasad is concerned, is present at Annexure 14 to his writ petition while the enquiry report in the case of the petitioner Kedar Nath Singh is at Annexure 12 to the 2nd writ petition and while the Enquiry Officer has exonerated Madan Prasad of all allegations, the explanation given by the petitioner Kedar Nath Singh has not satisfied the Enquiry Officer.

A second show cause was issued to the two petitioners vide Annexure 12 to C.W.J.C.No. 5345/2016 and Annexure 15 to the second writ petition, which was duly replied by the petitioners but not being satisfied that the Regional Deputy Director of Education, Saran Division, Chapra by the orders impugned at Annexure 13 to C.W.J.C.No. 5345/2016 and at Annexure 16 to the second writ petition has passed order of dismissal from service against the petitioners while upholding the charges and feeling aggrieved they are before this Court.

Mr. Samir Kumar Singh has appeared for the petitioner in C.W.J.C.No. 5345/2016 while Mr. Bindhyachal Singh has appeared



for the petitioner in the second writ petition. The State is represented by Mr. Ravi Verma, AC to GP-4 in C.W.J.C.No. 5345/2016 and Mr. Prabhakar Jha, learned GP-27 for the State.

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

The sequence of events detailed above would confirm that the only allegation against these two petitioners is that while their names were found down below in the merit list of 150 candidates, yet they have manipulated their appointments. While Enquiry Officer has disbelieved the charge in the case of the petitioner Madan Prasad, the charge have been upheld in the case of the petitioner Kedar Nath Singh. By filing a supplementary affidavit the petitioner Kedar Nath Singh has informed this Court that a similar termination order has been served on him on 30.12.2010 when he moved this Court in C.W.J.C.No. 2617/2011 and the Bench taking note of the entire sequence of events disposed of the writ petition subject to outcome of the vigilance enquiry vide judgment and order dated 6.8.2012, a copy of which was handed over to this Bench during the course of the proceedings. It has been submitted on behalf of the petitioner Kedar Nath Singh that by virtue of the order passed in C.W.J.C.No. 2617/2011 he has been reinstated in service and continues as such until the impugned order was passed.

I am rather shocked and surprised in the manner the



Regional Deputy Director of Education has mechanically chosen to dismiss these petitioners. There is no dispute that these petitioners possessed all the eligibility qualification for being appointed to the post. It is also not in dispute that they had responded to the advertisement and were called for interview and it is after scrutiny of their documents that they were issued appointment orders almost a quarter of a century ago. While the allegation against the petitioner Kedar Nath Singh of interpolating his marks in Matriculation and Teachers Training qualification for a higher position in the merit list has been refuted by the said petitioner to submit that the preparation of panel was certainly not the job of the aspirants rather was an error committed by the person in-charge of preparation of the panel, in so far as the petitioner Madan Prasad is concerned, it is an admitted position that he was shown lesser marks in the panel than what he had actually obtained. While the allegation against the petitioner Madan Prasad as per charge sheet is that his name appeared at serial no. 224, the allegation against the petitioner Kedar Nath Singh is that his name appeared at serial no. 340 and yet each of them has managed an appointment. It is again an admitted case that except for two gentlemen, namely, Bhagwan Singh and Kashi Nath Singh who chose to move this Court after a decade of the selection, to question the appointment, none of the aspirants to the post questioned either the panel or appointments made pursuant thereto.



In this regard I deem it necessary to refer to a guideline annexed by the two petitioners dated 11.12.1990, a copy of which is enclosed at Annexure 4 to the two writ petitions, whereunder the Regional Deputy Director of Education, Saran Division, Chapra was advised by the Special Director, Primary Education to go down the list in case required number of candidates were not found within the merit list of 150 candidates. Although the advisory is in relation to the reserved category candidates but in my opinion, if the authorities in-charge of the selection have extended the principle even in the case of general category candidates, this action certainly cannot be questioned as illegal because the principle of going down the merit list in case of non-availability of candidates as applied in case of reserved category candidate, if not applied universally, would give discriminatory results.

As I have indicated, even though the allegation against these two petitioners is, of having secured appointment despite their names figuring down below in the merit list, but it is uncontested that neither any person above the petitioners on the merit list had chosen to question their appointment and even the challenge set up by Bhagwan Singh and Kashi Nath Singh after a lapse of a decade did not result in their appointment, rather no relief was granted by the Writ Court to them.

Besides the undisputed position explained above where the



appointment of these petitioners was not put to question by any of the aspirants securing a better position, in view of the stipulation present in the advisory dated 11.12.1990, if the appointing authority has gone down below the merit list, no irregularity can be attributed in such selection specially where these appointees fulfill all eligibility conditions for such appointment whether on age qualification or educational qualification. In addition thereto, the very fact that these very appointments was put to scrutiny before the Lokayukta as evidenced from Annexure 7 to C.W.J.C.No. 18123/2016 and no infirmity found in the appointment of these petitioners by the Lokayukta, I am of the considered opinion that these petitioners have been subjected to undue harassment and made to face an enquiry after almost 25 years of their continuous service on non est grounds. There is absolutely lack of foundation for setting up the charge in absence of any challenge by a contender and a mere position of these petitioners lower in the merit list, certainly cannot be made a charge for drawing a disciplinary proceeding. Perhaps the Regional Deputy Director of Education was well aware of the lack of foundation for drawing the present proceeding in so far as these petitioners is concerned because without dealing with the issues raised by these petitioners in their reply to the second show cause, he has simply dismissed them terming their explanation non-satisfactory and has upheld the charge simply on the allegations. The order of termination lacks application of mind,



is unreasoned and does not deal with the issues raised by the two petitioners in their respective reply. In fact, in my considered opinion the entire proceedings lack foundation. The charge itself is misconceived because in view of the advisory dated 11.12.1990, if the petitioners had qualified for appointment and have been appointed as such after due scrutiny of their testimonials with no challenge by any aspirants for all these 25 years, it is rather unfortunate that they have been subjected to such avoidable and unwarranted proceedings, at this belated stage.

For the reasons discussed, the order of termination bearing Memo No. 840 dated 4.12.2015, impugned at Annexure 13, and Memo No. 550 dated 16.7.2016, impugned at Annexure 16, respectively passed by the Regional Deputy Director of Education, Saran Division, Chapra cannot be upheld and are accordingly quashed and set aside. The petitioners stand reinstated on their respective post(s) with all consequential benefits.

The two writ petitions are allowed but without any order as to costs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	19.01.2017
Uploading Date	19.06.2017
Transmission Date	NA

