

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18795 of 2015

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1. Arbind Kumar, son of Sri Bisheshwar Prasad, Resident of village- Bhagatpur, P.O. Origawan, P.S. Hilsa, District- Nalanda at Biharsharif, Assistant Teacher, Government Basic School, Usfa, District- Patna (since dismissed).

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Saran Division, Chapra.
5. The Regional Deputy Director of Education, Patna Division, Chapra.
6. The District Education Officer, Patna, District- Patna.
7. The District Programme Officer (Establishment), Patna, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.

Mr. Anita Kumari, Adv.

For the Respondent/s : Mr. Sushil Kumar, GP-22

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-01-2017

Heard Mr. S.B.K. Mangalam learned counsel for the petitioner and Mr. Sushil Kumar, G.P.22 for the State.

With the consent of the parties the writ petition has been heard with the view to final disposal at the stage of admission itself.

The petitioner prays for quashing of the order dated 15.10.2015 of the Regional Deputy Director of Education, Patna Division, Patna bearing Memo No. 3042 dated 15.10.2015, a copy of which is impugned at Annexure-12 to the writ petition whereby the petitioner has been dismissed from service i.e from the post of Assistant



Teacher, Government School, Usfa in the town and district of Patna.

Facts of the case briefly stated is that it is following an advertisement published in the newspaper that the petitioner applied against the post of Assistant Teacher in Government Basic school. The respondents being satisfied on the candidature that a letter dated 3.3.1989 was issued by the Regional Deputy Director of Education, Saran division at Chapra requiring the applicants including the petitioner to appear at interview on 17.3.1989. The petitioner appeared in the interview and submitted his papers. The panel was prepared and submitted for approval and it is on satisfaction on the procedural formalities that an appointment letter was issued to the petitioner bearing No. 234 dated 31.1.1991 under the signature of the Regional Deputy Director of Education, Saran Division, Chapra, a copy of which is enclosed at Annexure-3 to the writ petition. While the petitioner was discharging his duties that two writ petitions came to be filed in this Court at the instance of two of the applicants who had failed to secure an appointment namely, Sri Bhagwan Singh and Shri Kashi Nath Singh giving rise to C.W.J.C.No.8942 of 2001 and C.W.J.C.No.10212 of 2001 respectively.

It is under the orders of this Court passed on the said writ petition that a vigilance enquiry ensued and during which course it was reported that the petitioner did not possess the training



qualification yet was appointed. The matter reached the Principal Secretary of the Department who opined as such through his letter dated 19.12.2014 enclosed at Annexure-6. The name of the petitioner finds mention at 3(i) and he was held to be untrained at the time of appointment. A direction was issued to the Regional Deputy Director of Education to take steps for termination of the services of the teachers who did not qualify for appointment inclusive of the petitioner and it is following such direction that a proceeding was initiated by the Regional Deputy Director of Education and which has culminated in the impugned order of termination enclosed at Annexure-12 to the writ petition. The petitioner feeling aggrieved is before this Court.

Mr. Mangalam, learned counsel appearing on behalf of the petitioner while admitting to the fact that the petitioner did not possess the training certificate at the time of filing of the application form, submits that the petitioner was an examinee and had already appeared in the training examination in Session 1986-88 and the results were expected. He submits that this fact was disclosed to the respondents and since at the time of preparation of the panel, the petitioner had already been granted the training certificate in May 1989, the respondents feeling satisfied, recommended his case for appointment and which resulted in the appointment of the petitioner. He thus



submits that even if the petitioner was not in possession of the certificate he was fully eligible to apply since he had already appeared in the examination and the publication of result was not within the domain of the petitioner. He submits that since the degree was granted to the petitioner much before the panel was prepared, there was no infirmity in selection and the opinion expressed by the Principal Secretary which has been mechanically endorsed in the impugned order of termination is not only contrary to the evidence on record but reflects a non application of mind. Learned counsel also questions the impugned order on grounds that the proceeding has been conducted without service of chargesheet or supply of enquiry report to the petitioner.

It is in consideration of the submissions advanced that this Court framed the issues for a response by the learned State counsel in the order dated 16.1.2017 and which are as follows:

- “(a) A termination on grounds of not holding a training qualification cannot be attributable to the petitioner who has admittedly appeared in the Training Examination prior to initiation of selection process and the results have been published late but the certificate has been produced before panel was prepared; and
- (b) The proceedings have been conducted without service of charge, without service of enquiry report and without service of second show cause notice.”

Mr. Sushil Kumar learned State counsel while appreciating the issues raised sought time for filing a supplementary counter affidavit



which has since been filed and a bare perusal thereof would show that the respondents while sticking to their stand that the petitioner was not in possession of the degree on the date he filed his application for appointment, do admit that the copy of the enquiry report though issued to the petitioner returned unserved. In paragraph 7 of the supplementary counter affidavit it is stated that the charge was issued but the respondents have failed to clarify whether the charge ever reached the petitioner.

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

The issues already framed, there is no dispute that the enquiry conducted is infracted and suffers from procedural lapses. The issue is whether the matter needs to be remitted for a fresh enquiry or can be disposed on merits. In my opinion, a remand would only result in postponing an adjudication which can be done here and now.

The facts are all on record and are not on dispute. It is not in dispute that the petitioner holds training qualification. The only charge against the petitioner is that he was not trained on the date of filing of his application for appointment. The petitioner also does not dispute this fact rather all that he says is, that he had appeared in the training examination of the Session 1986-88 and the results were yet to be published which was entirely in the domain of the respondents.



Whether the eventuality of publication of result would act prejudice to the claim of the petitioner is an issue posed before this Court. Had it been a case where the petitioner being an examinee of the 1986-88 Session, was yet to appear in his final examination, may be the issue would have been different but in the present case not only the petitioner had appeared in the final examination of the Session, even the marks-sheet has been issued on 1.5.1989 much before the panel was drawn and which is the certification of his passing the training examination. The pleadings on record would show that the panel prepared was forwarded by the Regional Deputy Director of Education vide letter No. 170 dated 21.11.1990 and which panel was prepared after the respondents satisfied themselves on the testimonials of the candidates. Admittedly, the marks-sheet of the training qualification was issued much prior thereto on 1.5.1989. Meaning thereby the petitioner was able to produce his training qualification marks-sheet on the date of verification of the testimonials and that is why his name was recommended on 21.11.1990 and even thereafter vide letter dated 11.12.1990 when a second advisory was issued by the Special Director to the Regional Deputy Director of Education, to satisfy themselves on the testimonials. There is no dispute that at this stage the petitioner was fully equipped on the qualifications for the appointment.



In the undisputed circumstances discussed above. It is unfortunate that the Principal Secretary has mechanically proceeded to disqualify the petitioner on training qualification without verification of the facts on records. A mere instance that the petitioner was an examinee unless accompanied with the circumstances which would have confirmed the disqualification of the petitioner on training qualifications, a mere publication of result of the Session 1986-88 of the training Session after the advertisement, could not act prejudicial to the petitioner nor be an obstruction in the appointment.

For the reasons so discussed, the order dated 15.10.2015 passed by the Regional Deputy Director of Education, Patna Division, Patna bearing Memo No. 3042 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed with consequential benefits.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.02.2017
Transmission Date	NA

