

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 6144 of 2017

Along with

Interlocutory Application No. 3127 of 2017

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Lagandeo Ray Son of Ramanuj Ray, Resident of Village- Bataraulia, P.O.
Ganghara, P.S.- Akilpur, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources, Government of Bihar, New Secretariate, Patna.
2. The Director, Primary Education, Department of Human Resources, Government of Bihar, New Secretariate, Patna.
3. The Deputy Director, Primary Education, Department of Human Resources, Government of Bihar, New Secretariate, Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer (Estab.), Patna.
7. The District Sarv Shiksha Abhiyan, Patna.
8. The Block Education Officer, Patna.
9. The Mukhiya, Gram Panchayat Akilpur, P.O.+ P.S.- Akilpur, District- Saran.
10. The Secretary, Gram Panchayat Akilpur, P.O.+ P.S.- Akilpur, District- Saran.
11. The Block Development Officer, Dighwara, District- Saran.
12. Sarva Nand Singh S/o Sri Ramnath Singh, Resident of Village- Nilkanth Tola, Goraiya Asthan, P.O.- Beyahpur, P.S.- Danapur, District- Patna.
13. The then Mukhia (No. 02) namely Rukhiya Devi, W/o Harendra Mahto, R/o Village Manupur, P.O.+ P.S.- Dighwara, District- Saran.
14. The then Gram Panchayat Secretary, Shivji Ram S/o not known (Retired Person), R/o Village+ P.O.- Parsagarh, P.S.- Ekma, District- Saran.
15. Then Mukhiya (No.-01) Suresh Rai, S/o Late Deep Lal Rai, R/o Village- Batrauli, P.O.- Ganghara, District- Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sinha, Advocate

For the State : Mr. Madhukar Mishra, A.C. to S.C. 16

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH



ORAL JUDGMENT

Date: 27-04-2017

Heard learned counsel for the parties.

2. Learned counsel for the petitioner is permitted to make correction in the description of respondent no. 8 as well as paragraph no. 1 of the writ petition. Let the same be done during the course of the day.

3. The writ petition has been filed by the petitioner for quashing of order contained in Letter No. 453 dated 28.02.2017, issued by the respondent no. 6 by which the Experience Certificate issued in favour of the petitioner dated 13.11.2008 has been cancelled and also of order contained in Memo No. 2715 dated 30.03.2017, directing the respondents no. 9 and 10 to take action in terms of Annexure-1.

4. Interlocutory Application No. 3127 of 2017 has also been filed for interim stay of the aforesaid two orders.

5. The petitioner was initially appointed as Primary Teacher in the year 2008. Thereafter in light of an order of the Court in M.J.C. No. 6561 of 2012, he was removed from the post. However, he was restored pursuant to the order passed in Civil Review No. 108 of 2014 dated 16.12.2015 and since then has continued on the post. Due to the orders impugned in the present writ application, the Headmaster of the school by letter dated 22.04.2017



of the respondent no. 10, copy of which has been brought on record as Annexure-23 to the supplementary affidavit filed on behalf of the petitioner, has been directed not to take work form him.

6. Learned counsel for the petitioner submitted that by Annexure-1, the Experience Certificate issued on 13.11.2008 has been cancelled on the ground that the signatures of the then Secretary and Mukhiya on the Certificate issued in favour of the petitioner showing him to have worked for 12 months on honorarium has been found to be forged, is erroneous and has been passed in violation of the principles of natural justice. Learned counsel submitted that the said certificate has been issued under a valid issue number and the same was not verified from the records of the Gram Panchayat and further, prior to passing of the order, the petitioner was never noticed or heard. Learned counsel submitted that the signatures are genuine and later on due to local politics, the signatures are being denied, and that too, after more than 8 years. Learned counsel submitted that the certificate is dated 20.10.2008, whereas for the first time, an objection has been raised by the then Mukhiya on 23.12.2016. Learned counsel submitted that he is ready to get the signatures tested by any Forensic expert to prove that his stand is correct.

7. Learned counsel for the State submitted that the signatures have been found to be incorrect as the persons who had



signed themselves had stated such fact before the respondent no. 8. However, on the query of the Court as to whether the petitioner was given any notice or show cause prior to such cancellation, learned counsel very fairly submitted that the petitioner was never noticed or any show cause issued to him, prior to cancellation of his Experience Certificate. He also submitted that the petitioner has an alternative forum to move, i.e., before the District Teachers Employment Appellate Authority.

8. Having heard the matter, the Court is of the opinion that no order is required to be passed on the Interlocutory Application as the writ petition itself can be disposed off on a short point on the basis of admitted facts. Accordingly, Interlocutory Application No. 3127 of 2017 stands disposed off.

9. The impugned order by which the Experience Certificate granted to the petitioner dated 13.11.2008 has been cancelled, does not even whisper with regard to the petitioner having been either noticed or heard. The order which visits a person with major civil consequences, which is also punitive in nature, as in the present case, resulting in him loosing his job, cannot be passed without giving any opportunity of hearing to the person concerned. This is the basic requirement and cannot be waived, especially in the present case where, as stated earlier, it has resulted in termination of employment of the petitioner. The contention of the petitioner that



having been given an opportunity, he could have shown to the authorities and even proved that the signatures were genuine, for which he was even ready for the matter to be remanded to the Forensic Expert, is a good and valid ground for at least considering his case and giving him an opportunity to prove his innocence. Thus, the action against the petitioner of holding him guilty and imposing penal consequences, without even him being informed about the cause, in the opinion of the Court, cannot be sustained.

10. With regard to the objection of learned counsel for the State of there being an alternative forum to which the petitioner be relegated, the Court need not reiterate the settled law that availability of an alternative remedy by itself may not be a ground for the High Court to refuse exercise of its jurisdiction under Article 226 of the Constitution of India. When an order has been passed by an authority without jurisdiction or in violation of principles of natural justice, superior Courts may not refuse to exercise their jurisdiction although there exists an alternative remedy. In this connection, it would be useful to refer to the judgment of the Hon'ble Supreme Court in the case of **Committee of Management v. Vice-Chancellor** reported as **2009 (2) PLJR (SC) 59**, where at paragraphs no. 20 and 21, it has been held as under:

“20. Apart from the fact that a statutory authority cannot consider the validity of a statute, as has been urged before us by Mr. Choudhari, it is beyond any doubt or dispute that availability of an



alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one.

21. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior Courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy. In this context, it is appropriate to refer to the observations made by this Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.**, (1998) 8 SCC 1:-

“15. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....”

[See also Guruvayoor Devaswom Managing Committee & Anr. Vs. C. K. Rajan & Ors. (2003) 7 SCC 546]

In this case, *albeit*, before us for the first time, the vires of the proviso appended to Section 16 of the Act is in question, besides other points noticed by us hereinbefore.”

11. For the reasons aforesaid, on the short point of there being violation of the principles of natural justice, the impugned orders contained in Memo No. 453 dated 28.02.2017 as well as Memo No. 2715 dated 30.03.2017, both passed by the respondent no. 6, as well as the consequential order of the respondent no. 10 dated 22.04.2017, stand quashed.

12. Having set aside the aforesaid order, the Court



would only observe that the authorities are not precluded from proceeding against the petitioner in the matter of validity of the Certificate issued in favour of the petitioner under the signatures of the then Mukhiya and Panchayat Secretary dated 20.10.2008 bearing Serial No. 07 which formed the basis of issuing the Experience Certificate dated 13.10.2008 to him, in accordance with law, after complying with the principles of natural justice.

13. It is further made clear that the writ petition has been disposed off purely on the short point of there being violation of the principles of natural justice and the Court has not expressed any opinion on the merits of the case, which shall be decided, as and when the occasion arises, by the Competent Authorities, in accordance with law.

14. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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