

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.283 of 2018

In
Civil Writ Jurisdiction Case No.8006 of 2017

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1. Subhash Ram, son of Late Ganauri Ram, resident of Mohalla- Daudpur, P.O. + P.S.- Masaurhi, District- Patna, Pin- 804452, presently posted as Head Master, Middle School, Kinari, P.O.- Salarpur, P.S. + District- Jehanabad.
 2. Shambhu Kumar, son of Late Chhotan Ram, resident of village- Lodipur, P.O.- + P.S.- Hulasganj, District- Jehanabad, presently posted as Head Master, Upgraded Middle School, Sesamha, P.O.- Sensamha, P.S.- Shakurabad, C.O.- Ratni Faridpur, District- Jehanabad.
 3. Dr. Aalakh Deo Ravidas, son of Late Vitan Radas, resident of Mohalla- Gautam Buddha Colony, Nizamuddinpur, P.O. + P.S. + District- Jehanabad, presently posted as Head Master Upgraded Middle School, Sulemanpur, P.O.- Kazisara, P.S.- Kako, District- Jehanabad.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Dy. Director, Magadh Division, Gaya.
5. The District Magistrate, Jehanabad.
6. The District Education Officer cum Chairman, District Elementary Teacher Promotion Committee, Jehanabad.
7. The District Programme Officer (Estd.), Jehanabad.
8. The Block Education Officer, Jehanabad, Anchal Faridpur, Kako, District- Jehanabad.
9. The Block Education Officer, Kako Anchal, District- Jehanabad.
10. The Block Education Officer, Makhdumpur Anchal, District- Jehanabad.
11. The Block Education Officer, Ratni Faridpur, Anchal, District- Jehanabad.
12. The Block Education Officer, Ghoshi Anchal, District- Jehanabad.
13. The Block Education Officer, Hulasganj Anchal, District- Jehanabad.
14. The Block Education Officer, Madanganj Anchal, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shashi Bhushan Kumar, Advocate Mr. Chandra Kishore Kumar, Advocate Mrs. Arti Kumari, Advocate
For the Respondent/s	:	Mr. Ashutosh Ranjan Pandey -AAG15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-03-2018

Seeking exception to an order dated 14.12.2017 passed by the learned Writ Court in C.W.J.C. No.8006 of 2017 (Subhash Ram Vs. The State of Bihar & Ors.), this appeal has been filed under Clause 10 of the Letters Patent.

There being a delay of 38 days in filing of the appeal, I.A. No.1870 of 2018 has been filed seeking condonation of delay.

Keeping in view the reasons indicated in the application, the delay is condoned and I.A. No.1870 of 2018 is allowed and disposed of.

Even though by the common order passed on 14.12.2017, four writ petitions were disposed of and in all the cases, after partially allowing the writ petition and quashing the impugned order, the matter has been relegated to the concerned competent authority, namely, Principal Secretary, Education Department, Bihar for issuing necessary orders afresh, the petitioners, who were the petitioners in C.W.J.C. No.8006 of 2017, point out certain distinctive feature in their case and challenge the act of the learned Writ Court in not granting them complete relief after accepting their contention to some extent. The issue in question pertains to posting of employees in the Education



Department after their promotion on the post of Head Master based on the recommendation of the Bihar Elementary Teachers Promotion Committee, Jehanabad. The Committee made its recommendation with regard to the district of Jehanabad on 11.4.2017 (Annexure-3) and based on the same, the posting orders of the petitioners were issued and thereafter this order was stayed and by following a system of drawing of lottery, fresh posting orders were passed and the petitioners challenge the fresh posting order.

Even though in the writ petition the learned Writ Court has found that the system of posting by drawal of lottery is unknown and not permissible under law and has quashed the same, grievance of the petitioners is that having done so the learned Writ Court should have directed for issuing the posting order in pursuance to Annexure-3 dated 11.4.2017 and in directing the Secretary of the Department to look into the matter, so far as the petitioners and posting orders passed in the case of Jehanabad district is concerned, the same warrants modification on the simple ground that the earlier posting order as per the policy of the State Government issued on 11.4.2017, which was cancelled, was without following the due process of law inasmuch as it was



cancelled and a process of posting by drawing of lottery was undertaken which has been quashed by the learned Writ Court.

It is argued by the learned counsel appearing for the appellants that in the case of other two districts, which were subject-matter of adjudication in the connected writ petition, there was no posting order initially passed in accordance to the policy of the State Government, at the very first instance itself the posting was done by drawing of lottery and in their cases, the learned Writ Court may be correct in directing the Principal Secretary to pass fresh posting orders, but so far as the petitioners and employees working in the district of Jehanabad are concerned, it is stated that on 11.4.2017, Annexure-3 was passed. It was in accordance to the policy of the State Government, following the due process, as envisaged in the scheme for promotion and posting. Thereafter this was unduly stayed and again done by following a system of drawal of lottery which has been quashed.

Having done so, it is argued, in the case of Jehanabad, it was not necessary for the learned Writ Court to relegate the matter to the Principal Secretary of the Department to pass a fresh order of posting as the earlier one was passed in accordance to the policy and guidelines issued in the matter.



Having heard learned counsel Mr. Shashi Bhushan Kumar for the appellants and Mr. Amarendra Kumar for the respondents, we are of the considered view that with respect to C.W.J.C. No.8006 of 2017, when vide Annexure 3 dated 11.4.2017, the posting order was issued, which was said to be in accordance to the policy guidelines and scheme for posting and when there was no challenge to the same and when the challenge was only to cancellation of this order and following a system which was not permissible in law, the learned Writ Court should have allowed the writ petition in its totality and after having quashed the subsequent posting orders by drawal of lottery, stayed Annexure 3 and granted complete relief to the petitioner; more so when there was no challenge or illegality to the order dated 11.4.2017.

In view of the above, we allow this appeal and direct that in the light of the order passed by the learned Writ Court in C.W.J.C. No.8006 of 2017 cancelling the posting order undertaken by drawal of lottery, the earlier posting vide order dated 11.4.2017 shall be restored and necessary consequential orders of posting passed in pursuance to the same and the petitioners granted posting within a period of one month in pursuance to the aforesaid order 11.4.2017.



Needless to emphasize that we are passing the aforesaid order only on the ground that the order, Annexure 3 dated 11.4.2017, was not challenged by anybody. However, in case the same is challenged or any order passed, the State shall be free to proceed in accordance with law.

The appeal stands allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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