

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8404 of 2007

Akhileshwar Pandey, Son of Krishna Mohan Pandey, resident of Village-Baithania, P.O.- Mathia Brit Baithania, P.S.- Majhauria, District- West Champaran presently working as Assistant Teacher, Motilal Middle School, Majhauria, District- West Champaran.

... .. Petitioner/s

Versus

1. The state of Bihar.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Magistrate, West Champaran at Betiah, P.O. & P.S.- Betiah, District- West Champaran.
4. The District Superintendent of Education, West Champaran P.O. & P.S.- Betiah, District- West Champaran.
5. The Managing Committee Motilal Middle School, Manjhauria, through its Secretary, at & P.O.- Majhauria, P.S.- Majhauria, District- West Champaran.
6. Sri Braj Kishore Rai, posted as the Headmaster Motilal Middle School, Majhauria, P.S.- & District- Majhauria.
7. Antima Chaudhary W/o Sujit Kumar Kanodia, C/o Chandan Kumar Gadodia, at & P.O.- Majhauria, District- West Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14959 of 2006

Akhileshwar Pandey, Son of Krishna Mohan Pandey, resident of Village-Baithania, P.O.- Mathia Brit Baithania, P.S.- Majhauria, District- West Champaran presently working as Assistant Teacher, Motilal Middle School, Majhauria, District- West Champaran.

... .. Petitioner/s

Versus

1. The state of Bihar.
2. The Commissioner, Tirhut Division Muzaffarpur, P.O.- Muzaffarpur, P.S. and District- Muzaffarpur.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, West Champaran at Betiah, P.O. & P.S.- Betiah, District- West Champaran.
5. The District Superintendent of Education, West Champaran P.O. & P.S.- Betiah, District- West Champaran.
6. The Managing Committee Motilal Middle School, Manjhauria, through its Secretary, at & P.O.- Majhauria, P.S.- Majhauria, District- West Champaran.
7. Sri Braj Kishore Rai, posted as the Headmaster Motilal Middle School, Majhauria, P.S.- & District- Majhauria.



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8404 of 2007)

For the Petitioner/s : Mr. Uma Kant Shukla, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, Sr. Adv. AAG-5
: Mr. Vishambhar Prasad, AC to AAG-5

(In Civil Writ Jurisdiction Case No. 14959 of 2006)

For the Petitioner/s : Mr. Uma Kant Shukla, Advocate
For the Respondent/s : Mr. R.B.N. Singh, AC to G.A.-10

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

11 06-12-2018 Heard Mr. Uma Kant Shukla learned counsel appearing on behalf of the petitioner in both the cases and Mr. Vishambhar Prasad, AC to AAG-5 in CWJC No. 8404 of 2007 and Mr. Rana Bhupendra Singh counsel appearing on behalf of the State in C.W.J.C. No. 14959 of 2006.

These two writ petitions heard on different dates. C.W.J.C. No. 14959 of 2006 was filed by the petitioner challenging the appointment of respondent no.7 on the post of Headmaster in the school.

Learned counsel appearing on behalf of the petitioner submits that the C.W.J.C. No. 14959 of 2006 has become infructuous and as such he is not pressing the same writ application as the respondent no.7 has already attained the age of superannuation and retired from service. In view of the above, the C.W.J.C. No. 14959 of 2006 is disposed of as not pressed.



Adverting to the C.W.J.C. No. 8404 of 2007. The said writ application was filed by the petitioner for quashing the Memo no.35 dated 28.04.2007 issued by the Secretary, Motilal Middle School, Majhauria, West Champaran as contained in Annexure-11 whereby and whereunder the petitioner has been discharged from his services without contemplating any disciplinary proceeding and without giving any show-cause.

In the instant case despite valid service of notice to the Managing Committee and appearance through Vakalatnama Managing Committee has not filed any counter affidavit and no one appears on behalf of the Managing Committee or the Secretary of the Managing Committee to contest the instant writ application. It may not be out of place to mention here that this Court in order to ensure the proper service of notice to respondents no.5 to 7 directed the officers of the State Government to serve notice on respondent No.5 and 7 and pursuant to the order passed by this Court, the officer in-charge who have been entrusted to serve the notice has filed affidavit in C.W.J.C. No. 14959 of 2006 that the copy of the writ application was duly served to the respondents no.5 to 7, yet respondent no.5 to 7 has not chosen to contest the present writ application. On behalf of the official respondent the following



stands has been taken:-

(i) That the petitioner was not appointed by the Managing Committee but by the D.S.E. having no jurisdiction to make appointment as DSE he has the power to approve the appointment made by the Managing Committee.

(ii) The service of the petitioner has been dispensed with by the Managing Committee but he does not dispute the fact that the decision of the Managing Committee has not been approved by the D.S.E or by the competent authority.

Mr. Vishambhar Prasad submitted that as per the counter affidavit petitioner was not paid the senior pay scale. In reply Mr. Shukla has drawn attention of this Court order passed by this Court contained in Annexure-8 the order in C.W.J.C. No. 1485 of 2000 dated 07.07.2005. The said writ application was filed by the petitioner for quashing the order dated 31.05.1999 whereby the Director Primary education has rejected the representation of the petitioner for grant of senior pay scale. The Court on consideration the entire aspect of the matter directed the respondents to grant Grade-II scale w.e.f. 01.01.1998 the relevant part of the order in C.W.J.C. No. 1485 of 2007 is reproduced herein:-

“As such, this Court taking the same into



consideration as the petitioner got Grade-1 from 1.1.86 directs that he be paid in the higher scale or grade-2 from 1.1.98. One aspect which has further been argued that though entries have been made in service book and higher scale has been allowed to the petitioner but in view of intervening circumstances i.e. the letter issued by Annexure-5 the higher scale or the scale which the petitioner was required otherwise paid as given in annexure-2 which is a noting in his service book, the same has not been paid to the petitioner. If any balance remains the District Superintendent of Education, West Champaran shall verify the same and genuine dues in view of order of this Court if has not been paid, the same shall be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order along with a detailed claims which the petitioner shall furnish before him.

In the result, the writ application succeeds to the extent indicated above and Annexures -5 and 9 are quashed.”



In C.W.J.C. N0. 1485 of 2000 order dated 07.07.2005 is in clinching on two points, Firstly, that the respondents contest as to the validity of appointment of petitioner does not after the order dated 07.07.2005 when this Court has issued direction for grant of senior pay scale to the petitioner it is presumed that such order was passed by the Court on the basis that the appointment of the petitioner was legal and valid and as such respondents are precluded from raising the issue of validity of appointment after the order of this Court dated 07.07.2005. The second point also stands concluded by the same order is that the petitioner was entitled to grant of senior pay scale. Although, at the relevant time, petitioner was contesting his case for the post of Headmaster on account of the fact that he was senior most teacher and that is why he filed C.W.J.C. No. 14959 of 2006 wherein appointment of the respondent no.7 was as headmaster of the school was challenged but C.W.J.C. No. 14959 of 2006 has been held to be infructuous. There is no necessity to refer to that case for the purpose of deciding the present writ petition which is confined the issue raised in the present i.e. the validity of the order of the Secretary Motilal Middle School, Majhauria, West Champaran in Memo No. 35 dated 28.4.2007 and for the direction to the respondent to ensure



payment of salary for the period petitioner has actually worked and also the salary for the period was illegally restrained from working.

The learned counsel appearing on behalf of the petitioner submits that petitioner was prevented from working and as such he cannot be denied the payment of salary for the period has been restrained from working as teaching. The school in question is receiving grant-in-aid as deficit grant school where the entire liability of salary is borne by the State. From the material available on record and the order passed by this Court in C.W.J.C. No.1485 of 2000 contained in Annexure-8. The Court is constrained to hold that the decision contained in Annexure-8 is clinching and finally between the parties on the issue of the entitlement of the petitioner for higher scale and validity of the appointment, if the decision of termination of service the decision by the Managing Committee required to be approved by the state authority in the absence of approval is nullity in the eye of law. This scheme as to approval of service and approval of termination is designed to keep check on the arbitrary decision of the Managing Committee. Admittedly, in the instant case the decision contained in Annexure-11 was not approved by the respondent authorities of the State government



and in the absence of approval the decision contained in Annexure-11 cannot be accepted as legal and valid. Accordingly, the order contained in Annexure-11 is unsustainable in the eyes of law.

Adverting to the issue of consequential benefits on quashing of Annexure 11 the petitioner was restrained from working since 28.04.2007. This writ petition was filed on 17.7.2007 and it remained pending for 11 long years. During the aforesaid period the petitioner was restrained from working, now this Court in order to strike a balance between the interest of the petitioner for payment of salary for the period he was restrained from working at the same time the interest of public Ex-chequer, the Court deem and fit and proper that the petitioner should be paid 40% salary for the aforesaid period from 28.04.2007 till date the Court hereby directed the District Programme Officer (Establishment) the successor of the D.S.E West Champaran to ensure joining of the petitioner in the school in question at the earliest preferably within a period of one month from the date of receipt/ production of the copy of this order and also ensure payment of salary @ 40% from 28.4.2007 till 6.12.2018 and thereafter regular salary from 7.12.2018.

Since the public ex-chequer is involved in the



payment of salary the District Programme Officer has all the powers to ensure reinstatement of the petitioner in terms of direction in this case and any objection raised by the Managing Committee shall not be entertained by the District Programme Officer as despite repeated opportunity and filing of Vakalatnama Managing Committee has not contested the writ application as such the Managing Committee cannot be heard raising any objection in the matter of implementation of direction in this the instant writ application. The respondent District Programme Officer is required to obtain the certificate from the petitioner as to non-employment during the aforesaid period before determining payment for the period 28.4.2007 to 6.12.2018.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./Rashid

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