

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17923 of 2010

=====

MAHESH PRASAD S/O LATE LAL BABU MAHTO R/O VILL APHAR,
P.O.APHAR, P.S.AMNAUR, DISTT-SARAN(CHAPRA)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY, HUMAN RESOURCE DEVELOPMENT
DEPARTMENT GOVT. OF BIHAR, PATNA
3. THE DIRECTOR, SECONDARY EDUCATION BIHAR, PATNA
4. THE DEPUTY DIRECTOR, SECONDARY EDUCATION BIHAR, PATNA
5. THE ADDITIONAL EDUCATION DIRECTOR TIRHUT PRAMANDAL,
MUZAFFARPUR
6. THE DISTRICT SUPERINTENDENT OF EDUCATION
SARAN(CHAPRA)
7. GANESH RAM S/O NOT KNOWN R/O VILL HANSA PEER, P.O.
+P.S.MASHRAKH, DISTT-SARAN(CHAPRA), AT PRESENT PEON, RAM
WANTI NANDRAND PROJECT GIRLS HIGH SCHOOL, APHAR,
SARAN(CHAPRA)

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Mukesh Kumar Singh, Adv
For the State	:	Mr. Nadim Seraj (GP-5) Mrs. Shalini AC to GP-5
For the respondent	:	Mr. Umeshanand Pandit, Adv

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

9 18-06-2018 Heard learned counsel for the petitioner and the
respondents.

Mr. Rajendra Prasad Singh, learned senior counsel
appearing for the petitioner has made a very specific submission
that the petitioner was appointed in the school as peon with
effect from 14.11.1982 and for consideration of his case hearing
was given by the respondents but while passing of the order
contained in Annexure-1, respondents have not considered the



case of this petitioner. Referring to Annexure- 2 and 3, he submits that the reason assigned in Annexures-2 and 3, that is, non-availability of post is totally misconceived. He submits that the post of peon was available and that is why vide Annexure-1 Ganesh Ram was absorbed although, the appointment of said Ganesh Ram is subsequent to the appointment of the petitioner. In addition to that Ganesh Ram was not appointed as peon in the school but as Night Guard. He submits that in view of the above, the order contained in Annexure-1 which is based on incorrect fact and non-consideration of the case of the petitioner cannot be sustained.

Learned counsel for the State has not been able to make out the case that there was application of mind by the respondents in passing the order impugned.

Learned counsel appearing on behalf of the respondent- Ganesh Ram has not answered the submission of Mr. Rajendra Prasad Singh, Sr. Advocate that Ganesh Ram was appointed subsequent to the petitioner and initially Ganesh Ram was appointed as Night Guard but he was absorbed as peon and in preference to petitioner who was appointed earlier to him on the post of peon.

Considering the totality of the fact situation, the order



contained in Annexure-1, which appears to be non-speaking and the same has been passed on ignorance of the material facts, cannot be sustained. It is accordingly quashed.

The matter is remitted back to the Director to take final decision after hearing the petitioner and respondent Ganesh Ram within a maximum period of three months from the receipt/production of a copy of this order. The Director Secondary Education is required to examine the resolution of the proceedings of the school in question for determination of the claim for absorption as peon in the school. If it is found that petitioner was appointed earlier than the respondent Ganesh Ram and he was appointed as peon whereas Ganesh Ram was appointed as Night Guard, he is required to pass appropriate corrective order. Considering the factual position, whether Ganesh Ram was appointed earlier in time or petitioner and whether petitioner was appointed on the post of Peon and Ganesh Ram was appointed on the post of Nigh Guard, the Court is of the prima facie view that if the petitioner is appointed earlier in time on the post of peon whereas Ganesh Ram was appointed subsequent to the petitioner and he was appointed as Night Guard and as such the respondents are required to consider the claim of the petitioner for absorption



against the post of peon. Final decision in this regard must be taken by the respondents within a period of three months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

banti/rahul

U			
---	--	--	--

