

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.544 of 2016

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1. Punam Kumari W/o Shree Rajeev Ranjan R/o Village- Dhongla, Po Ganji, P.s
Hulashganj, District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Primary and Secondary Education, Government of Bihar,, Patna.
3. The District Education officer, Jehanabad.
4. The District Programme officer-cum Nodal officer , vigilance Enquiry ,
Jehanabad.
5. The Block Development Officer, Hulasganj, District Jehanabad.
6. The Block Education Officer, Hulasganj, District Jehanabad.
7. The Panchayat Secretary, Gram Panchayat Raj Koakarsa, District Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Binit Kumar, Adv.

For the Respondent/s : Mr. GYAN PRAKASH OJHA- GP22
Mr. Arun Kumar Sinha, G.P.-24.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 09-05-2018

Heard the learned counsel for the petitioner and counsel
appearing on behalf of the State.

Petitioner has challenged the order contained in Annexure-5
whereby the District Programme Officer-cum-Nodal Officer,
Vigilance Enquiry, Jehanabad by issuing letter to the Executive
Officer, Nagar Prishad, Jehanabad holding that the degree of the
petitioner from Airforce Vocational College is found Farzi and based
on the same, he has directed that the service of the petitioner be
dispensed with vide the aforesaid order dated 25.01.2016 as contained



in Annexure-8 to the I.A. application.

Mr. Narayan has submitted that order of termination is based on ipse dixit, no enquiry was held to ascertain the validity of the decree obtained by the petitioner from the Air force Vocation College. He submits that the reason for termination is unsustainable and in that view of the matter, the writ petition deserves to be allowed and petitioner is entitled to be reinstated. Mr. Narayan submits that petitioner has undergone two years teachers training course and as such petitioner is eligible for appointment and the respondents after scrutiny of the validity of the training certificate of the petitioner appointed the petitioner as Panchayat teacher.

In the counter affidavit, the respondent District Programme Officer has made statement in paragraph 6 that the degree of the petitioner was found Farzi, whereas in paragraph 9 different stand was taken by the respondent that NTT is not required qualification for appointment of post of Panchayat teacher, therefore, verification of the certificate is immaterial. It is difficult to reconcile the statement made in paragraph 6 and 9 of the counter affidavit. The Court failed to understand if there was no requirement for verification of NTT certificate as it was not adequate then how the respondents have made statement in paragraph 6 that the certificate of the petitioner was wrong and fake. The order of termination is not based on the point



that the qualification of NTT is not requisite and as such the service of the petitioner was dispensed with. The specific reason for termination is the diploma certificate is not from a recognized institution as is evident from Annexure-5 to 8.

It is now well settled that public order publicly made has to tested on the reason assigned in the order. The order cannot be justified on the basis of statement made in the counter affidavit. Since specific reason was not in the order of termination that reason cannot be supplemented by the respondent in the counter affidavit. Moreover the reason contained in the impugned order is not substantiated by the respondent in the counter affidavit. To the contrary a new stand was taken in the counter affidavit that the diploma of NTT is not adequate. The Court cannot approve the stand of the respondent in justifying the order of termination as the respondents have not undertaken any kind of enquiry to ascertain the validity of the recognition of the diploma of petitioner from Air force Vocation College. The law in this regard is well settled.

The Constitution Bench in the case of ***Mohinder Singh Gill Vs The Chief Election AIR 1978 SC 851*** has categorically held out that the reasons in the impugned order cannot be explained by way of counter affidavit. Relying upon the aforesaid judgment, the Court has no hesitation in holding that the impugned order cannot be



supplemented by way of counter affidavit. Accordingly, the writ application is allowed. Annexure-5 (Memo No.3202 dated 28.11.2015) is hereby quashed. Respondents are directed to reinstate the petitioner forthwith with all consequential benefits.

With the aforesaid direction, the writ application is allowed and disposed of to the extent indicated above.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

