

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6736 of 2015

=====

Chandramani Sah, S/o Sri Ram Charit Sah, R/o Village- Tariama, P.O.- Tariama,
P.S.- Simri, District - Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director (Primary Education), Bihar, Patna.
3. The District Magistrate, Saharsa.
4. The District Education Officer, Saharsa.
5. The District Programme Officer, (Establishment), Saharsa.
6. The Regional Deputy Director of Education, Saharsa.
7. The Area Education Officer, Saur Bazar, Saharsa.
8. The Block Education Extension Officer, Saharsa.
9. The Principal Secretary, Education Department, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs :

“That this is an application for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No. 440 dated 20.4.2015, issued under the signature of the Director, Primary Education, Govt. of Bihar, Patna, whereby and whereunder the claim of the petitioner was rejected on the ground that no evidence was produced for claim of the appointment nor his service was takenover, so, petitioner claim not equivalent/similar to Dinesh Prasad Sah, (who is also Assistant teacher in that very school and appointed alongwith petitioner), which is contrary to Hon’ble court order passed in CWJC No. 2560/2004 and analogous cases vide order dated



8.11.2010 and also CWJC No. 9454/2012, order dated-31.7.2014 and also issuance of a writ in the nature of mandamus directing and commanding the respondent authority, treated the service of the petitioner like Dinesh Pd. Sah and pay the arrear of salary w.e.f. 1988 on the ground that when his school was taken over in terms of 1976 taken over Act with effect from 1.1.1971, he is automatically entitled to payment of his salary like Dinesh Pd. Sah and/or pass appropriate order/orders as deem fit and proper.”

3. Basically, the grievance of the petitioner is that his service should be regularized from the day the service of Dinesh Prasad Sah has been approved/regularized and similar treatment be given to him with regard to payment etc.

4. Learned counsel for the petitioner submitted that Dinesh Prasad Sah and the petitioner were appointed together in the year 1970, but their service was not approved because at the relevant time, there was a ban by the State Government and further they were only Matric pass. Learned counsel submitted that Dinesh Prasad Sah had also moved the Court and pursuant to remand, the Director, Primary Education, initially, an order was passed rejecting his claim for approval of his service, but later on another order was passed by which the claim of Dinesh Prasad Sah was accepted and his service approved from the year 1988 and payment made to him. It was submitted that various reports and documents indicate that the petitioner is identically situated to Dinesh Prasad Sah and, thus,



earlier in the present case also, the Court had directed the authorities to come out with a specific case as to whether the petitioner and Dinesh Prasad Sah were similarly situated or not. Learned counsel submitted that he has brought on record a tabular chart showing similarity between the petitioner and Dinesh Prasad Sah, which has not been controverted by the authorities. He also relied upon the inspection report dated 05.02.2015, which indicates that the facts of Dinesh Prasad Sah were similar to the petitioner and both were marking their attendance in a separate register. It was further submitted that Dinesh Prasad Sah has been paid his entire dues from 24.12.1989, by order of the then District Superintendent of Education, Saharsa dated 19.04.2011, in which it has further been stated that Dinesh Prasad Sah was working and marking attendance in a separate register.

5. Learned counsel for the State submitted that the petitioner's case has absolutely no factual or legal basis and everything has been manipulated to create an impression that he was also working as a teacher in the school in question. Learned counsel submitted that the very initial report which the petitioner has shown to indicate that he and Dinesh Prasad Sah are identically situated is the communication of the Block Education Extension Officer to the District Superintendent of Education, Saharsa dated 23.09.1995.



Learned counsel submitted that mere perusal of the document, copy of which has been made Annexure- 7 to the writ application, would *ex-facie* show that the relevant portion on which the petitioner relies i.e., Dinesh Prasad Sah and the petitioner found working in the school, is a clear-cut interpolation, for the reason, that there is reference which appears to be in the case of Dinesh Sah, but after Dinesh the word Pra. (short for Prasad) and title Singh had first been written, which has been scratched and then Sah has been written at the place of Pra. and the handwriting of the word Sah is also different. He further submitted that after Dinesh, the word Sah has been written on top of Pra. and Singh has been scratched. Learned counsel referred to a chart of the Saharsa District Education Department of November, 1989 as well as September, 1995, which goes to show that there was one teacher by the name of Dinesh Prasad Singh but no teacher either by the name of Dinesh Prasad Sah or the petitioner. Learned counsel submitted that Dinesh Prasad Sah also seems to have created a document in his favour i.e., the above referred communication dated 23.09.1995, and now the petitioner is also taking the ground of parity with Dinesh Prasad Sah to get similar relief. Learned counsel submitted that even the communication referred and relied upon by learned counsel for the petitioner dated 05.02.2015, stating that Dinesh Prasad Sah and the



petitioner were marking their attendance in a separate register would not help the petitioner for there is no explanation as to why a separate register was being used for the purpose, and most importantly, even the said register did not bear any signature of any departmental authority. Learned counsel submitted that this commutation of the District Education Officer, Saharsa dated 05.02.2012 to the Director, Primary Education, is in fact an attempt to cover up the fact that there was no verifiable official records/documents to show that both of them were working in the school as there was no authentic attendance register and the attendance register which was duly signed by the departmental authorities, did not disclose their presence or them being teachers and, thus, a different register, was created and was shown on a later occasion so that it may indicate that they were also working, but they were unsuccessful in getting the same counter signed or authenticated by any departmental official, which clearly makes the document incapable of being relied upon in law. It was submitted that even in the communication dated 05.02.2015, with regard to the petitioner and Dinesh Prasad Sah marking attendance in a separate register, the period indicated is December, 1970 to January, 2008, which clearly indicates that all such records are totally sham as there is no explanation of why they would keep marking their attendance



in a separate register for more than 37 years, without such register ever being authenticated or counter signed by any official.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The entire claim of the petitioner seems to be seeking parity with Dinesh Prasad Sah. From the records, it appears that the authorities somehow missed the point that there is clear-cut manipulation and interpolation apparent in the document dated 23.09.1995, in which, after the word Dinesh, the word Singh has been scratched and in place of Pra. (Prasad), Sah has been written. As is rightly said, that every fraud or forgery leaves some telltale mark, which later on is caught and the truth prevails, which is apt in the present case also, for the reason that in the false confidence that a document in their favour could be created, the petitioner and Dinesh Prasad Sah seem to have forgotten that even with regard to Dinesh Prasad Sah, the word Pra. should not have been struck off since the name, after striking of Singh is only Dinesh Sah and not Dinesh Prasad Sah, as is the claim of the petitioner. Further, at every stage, it has been found that, except for the register, which also is neither signed nor authenticated, there is no other evidence to show that the petitioner and Dinesh Prasad Sah were working, coupled with the fact that such practice is said to have



continued for over 37 years i.e., December, 1970 to January, 2008, is almost a certain proof that such registers have been created later on and which is not a true reflection of the reality moreso, for the reason that all these years, they have neither been authenticated nor certified nor counter signed by any departmental official, as is required in law. Further, at every stage, even the basic communication dated 23.09.1995, which is the sheet anchor of the claim of both Dinesh Prasad Sah and in turn, the petitioner, to show that they had been found working, falls flat in view of the apparent manipulation which is clear to the naked eye also. There being no denial or rebuttal to the fact that the attendance by the petitioner and Dinesh Prasad Sah has not been found on any official record/register/document, which can be said to have any sanctity of law or which could indicate any authenticity i.e., either being counter signed or verified or certified by any official, would not create any right in the petitioner as such document/register cannot even be of any persuasive value. Thus, taking an overall view of the matter, once the Court has found that there is *bona fide* and genuine indication of there being fraud, the law being well settled, that fraud vitiates all subsequent action, the Court, especially in its extraordinary, discretionary and prerogative writ jurisdiction under Article 226 of the Constitution of India would not venture to give any relief to such person coming to the Court.



Looking at it from another angle, the facts being so highly contested and the contest not being superficial but on the basis of documents, which the Court has noticed above, reflecting interpolation, the writ forum under Article 226 of the Constitution of India is not the proper forum for any adjudication.

7. For the reasons aforesaid, the writ petition fails and is accordingly dismissed.

8. Before parting, the Court would call upon the Principal Secretary, Department of Education, Bihar, Patna, to look into the case of Dinesh Prasad Sah, in the aforesaid background and also the records, both at the departmental level and the headquarters level, and initiate appropriate action. Such direction is being given in the background that whatever order has been passed by the Director, Primary Education in favour of Dinesh Prasad Sah, maybe pursuant to remand by the High Court, but no positive judicial order has been passed in his case and, thus, it is only the order of the authority i.e., the Director, Primary Education, who himself has passed the order, which is always open to correction by the superior authorities as it is not an order of the Court. This is all the more important for the reason that the facts disclose a patent fraud on the system which cannot be allowed to be perpetuated and which needs to be corrected and dealt with an iron hand without any undue loss of time.



9. Let the Principal Secretary, Department of Education, Bihar, Patna be impleaded as respondent no. 9. Necessary correction be made by learned counsel for the State in the cause title of the writ petition during the course of the day. He accepts notice on behalf of newly added respondent no. 9 and shall also communicate the order to him for necessary action.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

