

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1631 of 2010

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1. Ram Sagar Paswan, S/O Ram Krishna Paswan, resident of Village- Lohanda, P.S.- Hilsa, Distt.- Nalanda.
 2. Manoj Kumar, S/O Yamuna Singh, R/O Vill.- Gangti, P.S.- Belaganj, Distt.- Gaya

... .. Appellant/S

Versus

1. The State of Bihar
2. The Education Commissioner -Cum- Secretary Deptt. of Secondary, Primary and Adult Education, Vikash Bhawan, Bailey Road, Patna.
3. The Director, Secondary Education, Vikash Bhawan, Bailey Road, Patna.
4. The Regional Deputy Director of Education, Magadh Division, Gaya.
5. The District Education Officer, Aurangabad.
6. The Principal, Primary Teachers Education College, Tara (Daud Nagar), Distt.- Aurangabad

... .. Respondent/s

with

Letters Patent Appeal No. 1636 of 2010

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1. Sanjay Kumar, S/O Gopal Prasad Singh, R/O Vill.- Sowal, P.S.- Tekari, Distt.- Gaya.
 2. Surendra Kumar, S/O Bindeshwar Singh, R/O Vill.- Chakiya, P.S.- Paliganj, Distt.- Patna.
 3. Suresh Kumar Pradeep, S/O Parmeshwar Dayal, R/O Vill.- Lond, P.S.- Shridala, Distt.- Nawadah.
 4. Mohan Paswan, S/O Job Lal Paswan, R/O Vill.- Jaitopur, P.S.- Kawa, Distt.- Nalanda at Biharsharif.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Director, Secondary Education, New Secretariat, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.

... .. Respondent/s

with

Letters Patent Appeal No. 438 of 2011

In

Civil Writ Jurisdiction Case No.1204 of 2002

Shambhu Prasad Yadav, S/O Sri Shanker Prasad Yadav, R/O Moh-Godawari , Chand Chaura, P.S.-civil Line , Town & Distt. -Gaya.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Director, Secondary Education, New Secretariat, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.

... .. Respondent/S

Appearance :

(In Letters Patent Appeal No. 1631 of 2010)

For the Appellant/s

:

Mr. Sunil Kumar Verma, Adv.



For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3
(In Letters Patent Appeal No. 1636 of 2010)
For the Appellant/s : Mr. Sunil Kumar Verma, Adv.
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-3
(In Letters Patent Appeal No. 438 of 2011)
For the Appellant/s : Mr. Kumar Dharendra Pratap Singh, Adv.
For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 26-11-2018

It is feeling aggrieved by a common judgment and order of a learned Single Judge, whereby the writ petitions were dismissed that the writ petitioners in the respective writ petitions are before this Court in this batch of intra Court appeals. While LPA No.1631 of 2010 arises from the judgment and order passed in CWJC No.2420 of 1997, LPA No.1636 of 2010 arises from the judgment and order passed in CWJC No.2419 of 1997 and LPA No.438 of 2011 arises from the judgment and order passed in CWJC No.1204 of 2002.

For the sake of convenience we would be referring the pleadings made in LPA No.1631 of 2010 unless clarified with specific reference to the other two appeals.

The appellant-writ petitioners in the batch of appeals were appointed on Class III post of Clerk by a selection committee chaired by one Ram Yatan Paswan, the then Regional Deputy



Director of Education, Magadh Division, Gaya following the selection process initiated in the year 1994. These appointments were suspected on the procedure followed as well as the jurisdiction of the committee to make such appointment and which led to a decision dated 31.12.1996, whereby it was resolved to terminate the services of all the employees appointed by Ram Yatan Paswan, the then Regional Deputy Director of Education, Magadh Division, Gaya. It is following such decision that the salary of the employees were kept in abeyance by an order passed on 14.02.1997 and it is feeling aggrieved by such action that these appellants as writ petitioners came before this Court in separate writ petitions as discussed above, which were dismissed by a learned Single Judge of this Court vide common judgment and order dated 13.07.2010. Feeling aggrieved that the present batch of appeals were filed by the writ petitioners and which were heard analogous and allowed in part by a coordinate Bench vide judgment and order passed on 03.02.2012, whereby the claim of the appellant-writ petitioners in the three appeals was upheld except appellant nos.2, 3 and 4 in LPA No.1636 of 2010, namely, Surendra Kumar, Suresh Kumar Pradeep and Mohan Paswan respectively, inter alia, on grounds that their relatives were the members of the Divisional Establishment Committee. Their



services rendered was, however, directed for being counted for the purpose of retiral benefits and since no termination order had been issued by the respondents as yet that all these appellant-writ petitioners were held to be in service.

It is feeling aggrieved by the judgment and order passed by the Division Bench dated 03.02.2012 in the batch of appeals that the State moved the Supreme Court in Special Leave Petitions which on being allowed were numbered as Civil Appeal Nos.5608, 5610 and 5607 of 2015. The Civil appeals were allowed by the Supreme Court vide judgment and order passed on 26.07.2018 and since the Supreme Court was of the opinion that the Division Bench had passed the judgment without noticing the reasons assigned by the learned Single Judge to dismiss the writ petitions that the matter was remitted and the appeals were restored to its file for fresh hearing and disposal.

The bare essential facts have already been noted by us hereinabove and in the nature of the order that we propose to pass we would not be required to delve further into the same.

Suffice it to say that while there are no records to support that any lawful procedure was followed by the committee to make such appointments, it remains undisputed that no advertisement was issued in this regard except that some



requisition had been made by the Committee through the local Employment Exchange for making such appointments. The discussions present in the judgment and order of the learned Single Judge does note that while the process of selection was started on 22.07.1994 by issuance of interview letters to the writ petitioners fixing the date of interview on 28.07.1994, there was nothing on the record of the proceeding which would confirm whether the local Employment Exchange had in fact been approached by the Regional Deputy Director of Education, Magadh Division, Gaya and whether the interview letters were in actual, issued to these requisitioned names. We also take note that there is nothing on the record of the proceedings to support the selection process except a proceeding dated 29.07.1994, a copy of which is at Annexure 4 to LPA No.1631 of 2010 which simply goes to confirm an exercise already conducted.

It is perhaps in this background and with nothing present on record to support a valid selection process held in accordance with the rules in force as well as by an authority competent to do so, that the learned Single Judge has proceeded to opine that the appointments made were tainted with malice and fraud and the documents were manufactured by Ram Yatan



Paswan, the then Regional Deputy Director of Education, Magadh Division, Gaya.

The second issue which persuaded the learned Single Judge to uphold the decision of the successor in office of the Regional Deputy Director of Education, Magadh Division, Gaya as present in his order dated 31.12.1996 enclosed at Annexure 6 to the appeal is that while the interview letters, copies of which are enclosed at Annexure 3 series, required the candidates to attend the interview on 28.07.1994 at the Dakbunglow at Kakolat in the district of Nawada which, according to the learned Single Judge, was at a distance of almost 100 kilometers from the office of the Regional Deputy Director of Education, Magadh Division, Gaya, a meeting of the Divisional Establishment Committee was held on the very next day i.e. 29.07.1994 at Gaya, which further confirmed the notion that the documents had been manufactured to support the selection.

The third issue which crossed the mind of the learned Single Judge to voice his opinion is of nepotism which also has been upheld by the Division Bench while considering the opinion of the learned Single Judge in the earlier round and there is no dispute that the relatives of some of the candidates were members of the Divisional Establishment Committee.



Perhaps it is these relevant factors which persuaded the successor in the office of the Regional Deputy Director of Education, Magadh Division, Gaya, to issue the letter bearing Memo No.2706 dated 31.12.1996 enclosed at Annexure 6, whereby the district authorities in the Education Department were informed of the decision taken by the Divisional Establishment Committee on 28.12.1996 for terminating the services of all those appointees on Class III post of Clerk, Class IV post of Peon as well as Teachers, who had been appointed by the committee chaired by Ram Yatan Paswan, the then Regional Deputy Director of Education, Magadh Division, Gaya. These authorities were directed to take follow up steps in the light of the decision so taken.

A second order was issued by the Regional Deputy Director of Education bearing Memo No.397 dated 14.02.1997, whereby salary of these appointees has been stayed. The list enclosed with this letter contains the names of these appellant-writ petitioners and it is since such date that the salary of these appellant-writ petitioners and others were stopped forcing them to move before this Court in the batch of writ petitions which have been dismissed and hence this batch of appeals.



We have heard Mr. Sunil Kumar Verma, learned counsel appearing for the appellant-writ petitioners in LPA No.1631 of 2010 and LPA No.1636 of 2010, while Mr. Kumar Dhirendra Pratap Singh appears for the sole appellant in LPA No.438 of 2011. We have also heard Mr. Sunil Kumar Mandal, learned Standing Counsel No.3 on behalf of the State and we have perused the records.

While The substance of the argument advanced by Mr. Verma to support the appointments and to assail the decision taken by the successor Divisional Establishment Committee to cancel the appointments is by placing reliance on a departmental notification dated 13.08.1974 enclosed as Annexure 10 to the second supplementary affidavit filed in LPA No.1636 of 2010 which, inter alia, authorizes the Regional Deputy Director of Education for appointment on ministerial posts as well as to canvass that the requisition placed before the Employment Exchange is sufficient compliance of a selection procedure, it is also his argument that even though the decision was taken by the Divisional Establishment Committee to terminate the services of appointees made by the Divisional Establishment Committee chaired by Ram Yatan Paswan, the then Regional Deputy Director of Education, Magadh Division, Gaya as manifest from the letter



dated 31.12.1996 (Annexure-6) but no follow up steps was taken in that regard nor any order of termination was issued and thus the appellant-writ petitioners have continued in service and in such view of the matter, the opinion of the learned Single Judge that the decision of the Divisional Establishment Committee would amount to a deemed termination of service, cannot be lawfully sustained.

He further submits that the letter dated 31.12.1996 of the successor in office of the Regional Deputy Director of Education while communicating the decision of the Divisional Establishment Committee to terminate the services, further directs the authorities concerned to take lawful steps in the light of the decision but no follow up steps have been taken and thus the appellant-petitioners continue to hold the posts albeit without salary.

Per contra it is the argument of Mr. Mandal, learned Standing Counsel No.3 that the issues noted by the learned Single Judge to uphold the decision of the Divisional Establishment Committee as reflected in the notification dated 31.12.1996 enclosed at Annexure 6 of the Regional Deputy Director of Education, Magadh Division, Gaya stands uncontroverted and there is no chit of paper available to support a lawful selection procedure. According to Mr. Mandal, where the facts speak for



themselves and the illegality in the process stands confirmed, the opinion of the learned Single Judge would require no interference.

Having heard learned counsel for the parties and having perused the records in our opinion, the following issues would fall for consideration:

- (a) Whether the Divisional Establishment Committee chaired by the then Regional Deputy Director of Education, Ram Yatan Paswan had the authority to make appointment against Class III and Class IV posts;
- (b) Whether even if the committee so constituted had the authority to make appointment, did the committee follow a lawful procedure to satisfy the mandate present in Articles 14 and 16 of the Constitution of India; and
- (c) Whether the directions present in the letter bearing Memo No.2706 dated 31.12.1996 of the Regional Deputy Director of Education at Annexure 6 has been carried out by the authorities competent to do so and to whom the letter was addressed.



Mr. Verma, learned counsel appearing for the appellant-writ petitioners has invited the attention of this Court to a notification of the Education Department dated 13.08.1974 placed at Annexure 10 to the second supplementary affidavit filed in LPA No.1636 of 2010 and which, inter alia, does vest the authority in the Regional Deputy Director of Education to lead the Divisional Establishment Committee. To that extent, may be, Mr. Verma is correct but then the Committee consists of several other members and there is no document on record to support any lawful procedure adopted by any such committee constituted for making such appointment.

The interview letter enclosed at Annexure 2 dated 22.07.1994 requires the candidates to be present in the office of the Regional Deputy Director of Education at Gaya and not before the Divisional Establishment Committee on 28.07.1994. Annexure 3 is another letter of the then Regional Deputy Director of Education, Ram Yatan Paswan dated 23.07.1994 directing the members of the Committee i.e. the District Education Officers, Gaya, Nawada, Aurangabad and Jehanabad as well as the District Superintendents of Education, and Inspectors of Schools to attend the meeting on 29.07.1994 at 11.00 AM at Dakbunglow at Kakolat in the district of Nawada which is stated to be at a



distance of about 100 kilometers from Gaya. Surprisingly on the same day i.e. 29.07.1994, the proceeding for such meeting has been drawn at his office at Gaya as manifest from Annexure 4.

In our opinion, these three documents i.e. the interview letter at Annexure 2 for interview at Gaya, Annexure 3 requisitioning the meeting of the Divisional Establishment Committee at Kakolat in the district of Nawada i.e. 100 kilometers away and the noting of the proceedings on the same day i.e. 29.07.1994 at the headquarter at Gaya, cannot be reconciled considering the distance between Kakolat and the headquarters at Gaya. These are serious aberrations present in the process. The issue of nepotism as noted by the learned Single Judge stands confirmed by the Division Bench in the earlier round and which again taints the process.

We are also constrained to note that despite an order passed in this batch of appeals on 22.12.2011 requiring the State to produce the minutes of the meeting of the Divisional Establishment Committee held on 28.12.1996 as finds mentioned in the letter dated 31.12.1996 of the Regional Deputy Director of Education, Magadh Division, Gaya enclosed at Annexure 6, it has not been placed on record.



In the nature of the notings made and the discussions held we are certainly not in any confusion to hold that the selection process was tainted with suspicion but then if an order was issued by the Regional Deputy Director of Education, Magadh Division, Gaya following a decision taken in the meeting of the Divisional Establishment Committee held on 28.12.1996 directing the authorities concerned for taking necessary steps for terminating the appointments, the said direction had to be taken to its conclusion. Unfortunately the exercise has been abandoned midway through, except that, by a subsequent order bearing Memo No.397 dated 14.02.1997 at Annexure 7, a direction was issued to the district authorities connected with the appointments to stop the salary payment to these employees until further orders. Despite such direction present, no follow up step has been taken by the State to terminate the appointments as yet.

In such view of the matter and even if prima-facie we find fault in the selection process so held, we are yet in respectful disagreement with the opinion of the learned Single Judge to conclude that the decision taken by the Divisional Establishment Committee in its meeting held on 28.12.1996 to terminate the appointments as communicated by the Regional Deputy Director



through his letter bearing Memo No.2706 dated 31.12.1996 is an order of termination by deeming fiction.

That there is no dispute that the appellant-writ petitioners had been appointed by issuance of appointment order(s) and even if the Divisional Establishment Committee, Magadh Division was of the opinion that these appointments were tainted with fraud, the appointments had to be either cancelled or terminated by an order passed by an authority competent to do so in accordance with law and with opportunity of defence to those affected candidates but certainly a decision of the Divisional Establishment Committee as noted in the order of the Regional Deputy Director of Education present in his letter dated 31.12.1996 cannot be held an order of termination by deeming fiction.

That the salary of these appellant-writ petitioners has been stopped by the order of the Regional Deputy Director of Education, Magadh Division, Gaya dated 14.02.1997 at Annexure 7 and there is nothing on record to support that the appellant-petitioners have discharged duties on their respective posts, we at this stage and in the circumstance noted, are persuaded to direct the Regional Deputy Director of Education, Magadh Division, Gaya to ensure that the directions present in



his letter dated 31.12.1996 is taken to its lawful conclusion by the authorities competent to do so, who shall pass appropriate order(s) in accordance with law and with due opportunity of hearing to the appellant-writ petitioners.

That a period of almost 22 years has gone by since the order under reference was passed, we direct the Regional Deputy Director of Education, Magadh Division, Gaya to take necessary steps in this regard either by himself or through the authorities competent to do so for attaching finality to the exercise so initiated for its completion expeditiously and preferably within three months of receipt/production of a copy of this judgment by the appellant petitioners.

Since Mr. Mandal, learned State Counsel, also represents the Regional Deputy Director of Education, Magadh Division, Gaya, it is due notice to the said authority for ensuring compliance. The common judgment and order of the learned Single Judge impugned herein dated 13.07.2010 passed in CWJC No.2420 of 1997, CWJC No.2419 of 1997 and 1204 of 2002 stands modified to such extent.

Considering that the appointment of these appellant-writ petitioners are doubted on its genuineness and since these appellant-writ petitioners have been restrained from discharging



duties as well as from drawing their salary, since after issuance of the direction present in the letter dated 31.12.1996 and the letter dated 14.2.1997 of the Regional Deputy Director of Education, Magadh Division, Gaya we at this stage would merely observe that the directions present in the letter dated 31.12.1996 and 14.02.1997 of the Regional Deputy Director of Education, Magadh Division, Gaya, would be subject to the final orders so to be passed by the authority concerned.

The appeals are allowed to the extent above with the directions so present.

No costs.

(Amreshwar Pratap Sahi, CJ)

skpathak/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-11-2018
Transmission Date	NA

