

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.78 of 2015

In
Civil Writ Jurisdiction Case No.10792 of 2013

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Sikandar Kumar S/o- Shiv Nandan Prasad Yadav, Resident of Village and
Post - Latouna, P. S. - Triveniganj, District - Supaul

... .. Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resources Development,
Government of Bihar, Patna
3. The Director, Department Of Primary Education, Government Of Bihar, Patna
4. The Director, Research and Training, H.R.D Bihar, Patna
5. The Regional Deputy Director Of Education, Koshi Division, Saharsa
6. The District Education Officer, Supaul
7. The District Programme Officer (Establishment), Supaul.
8. The District Teacher Employment Appellate Authority, Supaul.
9. The Block Education Officer, Tribeniganj, District - Supaul

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Bijay Shankar Choubey
For the Respondent/s : Mr. Sc19-Ajay Bihari Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

19 12-12-2018 Heard Mr. Bijay Shankar Chaubey, learned counsel
appearing for the appellant-writ petitioner and Mr. Upendra Kumar
Singh, AC to GA-8 for the State.

It is feeling aggrieved by the judgment and order of the
learned Single Judge dated 16.10.2014 passed in C.W.J.C. No. 10792
of 2013 whereby the writ petition has been dismissed, that the
petitioner as appellant is before this Court.

We have perused the records of the writ proceeding and
also the opinion of the learned Single Judge and in our considered



opinion, the legal recourse taken by the appellant-writ petitioner is premature and does not require any opinion or expression on merits because the recommendation for termination which was put to challenge before the District Teachers Employment Appellate Authority and negated by the order impugned before the learned Single Judge, was yet to be taken to its conclusion by the authority competent to do so.

On query on the cause of action, Mr. Chaubey, learned counsel for the appellant has invited our attention to a letter bearing No. 200 dated 29.09.2010 of the Block Education Officer, Triveniganj addressed to Panchayat Secretary/Mukhiya, Gram Panchayat Mirjawa in the District of Supaul to submit that an adverse opinion has been drawn as to the nature of the appointment of the petitioner as a Panchayat Teachers holding that the Baby Teachers Training Certificate obtained by the appellant was not from a recognized Institution and thus a recommendation for cancellation of his appointment has been made without bothering to notice or give opportunity of hearing and explanation. While saying so Mr. Chaubey also submits that no order has yet been passed by the appointing authority.

The pleadings in the writ petition also do not reflect whether or not the services of the petitioner has been interfered with following such directions issued by the Block Education Officer as present in his letter dated 29.09.2010.



Apparently thus, it is with a view to preempt any consequential action by the appointing authority that the appellant-writ petitioner chose to question this direction of the Block Education Officer before the District Teachers Employment Appellate Authority, Supaul in Case No. 98 of 2010 and obviously, since the opinion of the Block Education Officer was raised on the validity of the qualification held by the appellant-writ petitioner, which was yet to be considered by the competent authority, the appellate authority chose not to interfere with such direction to dismiss the appeal.

The learned Single Judge by the judgment and order impugned has also refused to interfere with the direction as in the opinion of the learned Single Judge the Baby Teachers Training certificate obtained from Gandhi Hindi Vidyapeeth, Allahabad is not one of the recognized qualification for such appointment.

No counter affidavit was filed by the State before the writ court though it is filed in the appeal and the respondents have relied upon a judgment of the Supreme Court to contest the claim advanced by the appellant-writ petitioner to submit that the qualification obtained by him did not clothe him with eligibility to the post.

It is rather surprising that in the entire contest right from the stage of the writ proceedings until it has reached before us, neither any statement has been made by appellant-writ petitioner whether or not he is yet occupying the post nor the State has bothered to verify the position whether the direction of the Block Education



Officer, impugned before the appellate authority, requiring the appointing authority to take steps for cancellation of appointment of the appellant-petitioner as a Panchayat Teacher, obviously in accordance with law, has been taken to its conclusion.

In such view of the matter we hold this proceeding premature for even if there has been opinion expressed by the authorities on the validity of the certificate in question, in our opinion, until such time that the appointing authority passes necessary orders in the light of the directions issued by the Block Education Officer as present in his letter dated 29.09.2010 impugned before the appellate authority on consideration of the stand taken by the appellant-writ petitioner, the writ petitioner had no cause of action but even while observing as such, we would direct the competent authority i.e. the Panchayat Secretary/Mukhiya, Gram Panchayat Mijrawa in the District of Supaul to take a final decision on the directions so issued in accordance with law and with opportunity of hearing to the petitioner. The order of learned Single Judge stands modified to the extent indicated above.

Let a decision be taken preferably within three months from today. The District Programme Officer, Supaul i.e. the respondent no. 7, shall ensure that the issue is taken to its conclusion preferably within three months from today.

Since the pleadings are silent on the issue of discharge of duty by the writ petitioner, any claim towards arrears of salary would



abide by the final decision to be taken by the appointing authority on examination of the factual position whether or not the writ petitioner has actually worked on the post since after the direction was issued by the Block Education Officer.

With the aforesaid observation this appeal stands disposed of.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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