

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6406 of 2015

=====

Shiv Kumar Yadav son of Gyani Yadav, Resident of village- Diwara, P.S. Gurua
District Gaya

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary Food Supply and
Commerce Department, Patna
2. The District Magistrate, Gaya
3. The District Supply Officer, Gaya
4. The Sub-Divisional Officer, Sherghati, Gaya
5. The Block Supply Officer, Gurua, Gaya

.... Respondents

=====

Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Yogendra Kumar Singh,
Mr. D.N. Tiwari, Advocates

For the Respondents : Mr. Jitendra Kumar, AC to AAG 11

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-09-2018

The present writ petition has been filed for the following

reliefs –

“(A) A writ in the nature of certiorari or any other appropriate writ/s order/s direction, quashing the following :

I. Order dated 10-7-2014 contained in memo No. 358 passed by Sub-Divisional Officer, Sherghati, Gaya cancelling the licence of public distribution system shop of the petitioner on the ground that off and on he work as lecturer in Dharnidhar College. (Annexure5).

II. Order dated 12-3-15 passed in Supply Appeal no. 19/14 by District Magistrate Gaya dismissing the appeal filed by the petitioner against the order dated



26-6-14 passed by the Sub-Divisional Officer, Sherghati Gaya (Annexure-6).

(B) A writ in the nature of mandamus or any other appropriate writ order/s direction commanding the respondents for the following:

I. To hold that the order contained in Annexures 5 and 6 to the petitioner is nonest in the eye of law.

II. To restore P.D.S. shop license of the petitioner bearing no. 267/2007 forthwith.

(C) To any relief/s for which the petitioner is found entitled to."

2. Learned senior counsel for the petitioner submits that the order of cancellation of PDS licence of the petitioner on the ground that the petitioner was working as Lecturer in Dharnidhar College is wholly arbitrary and ex facie contrary to law. It is submitted that the said College is not a Government College and the petitioner did not hold the post of profit in the Government as contemplated in para 2.6(f) of the Public Distribution System (Control) Order 2001 (for short, 'Control Order') notified on 15th February 2007. It is further stated that the petitioner had been granted PDS Licence No. 10/1989 under the provisions of the Bihar Trade Article (Licenses Unification) Order, 1984 and the same continued after the Control Order came into effect. Para 2.6(f) of the Control Order contemplates certain disqualifications for allotment of PDS shops but the same does not



contemplate cancellation of existing PDS licence granted under the Unification Order.

3. Learned counsel for the respondents refers to paragraph 10 of the counter affidavit filed on behalf of the respondent nos. 4 and 5 to oppose the writ petition. It is stated that the College in question was receiving financial aid from time to time from the State Government which was proportionately disbursed to the teaching and non-teaching staff of the College. The teaching staff was also receiving remuneration for holding examination, evaluation of answer books etc. The College was earning tuition fee and other grants which were proportionately distributed among the teaching and non-teaching staff of the College. It is therefore submitted that the petitioner was holding an office of profit and the order of cancellation of PDS licence suffers from no infirmity.

4. Having heard learned counsel for the parties and on careful consideration of the materials available on record, I find merit in the writ petition. A bare reading of para 2.6 of the Control Order discloses that the disqualification from allotment of PDS shop arises if the applicant holds a post of profit in the Government. I am of the view that the post of Lecturer in the College in question cannot be equated with a post of profit in the Government. It is not the case of the respondents that it was a Government College. I find it difficult to



accept the contention of the respondents that merely because financial aid and grants were received by the College and distributed among the teaching and non-teaching staff, the same would amount to a post of profit and that too in the Government. I am also in agreement with the submission of learned senior counsel for the petitioner that Para 2.6 concerns itself with allotment of licence and there is nothing therein to suggest that the existing PDS licence of the petitioner is required to be cancelled.

5. In the above circumstances, the writ petition succeeds and the impugned order dated 10.07.2014 contained in memo No. 358 passed by Sub-Divisional Officer, Sherghati, Gaya (Annexure-5) and the appellate order dated 12.03.2015 passed in Supply Appeal No. 19/14 by District Magistrate Gaya (Annexure-6) are hereby quashed.

6. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	28.09.2018
Transmission Date	N.A.

