

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22350 of 2011

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Vishwanath Jha S/O Late Pandit Bramhadeo Jha Resident of Village- Manik
Chaowk, Police Station- Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resources Development Department,
Government Of Bihar, Patna.
3. The Director, Secondary Education, Human Resouces Development
Department, Government Of Bihar, Patna.
4. The Regional Deputy Director, Education, Tirhut Division, Muzaffarpur.
5. The District Education Officer, Sitamarhi.
6. The Headmaster, M.K.G. Higher Secondary School, Manik Chowk,
Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3
For the Respondent/s : Mr. Chakradhari Shar Singh Aa

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 02-07-2018

Heard Mr. Satish Chandra Jha, learned counsel
appearing on behalf of the petitioner and the learned counsel
appearing on behalf of the State.

2. Petitioner has challenged the validity of the order
contained in Annexure-3 whereby the District Education Officer,
Sitamarhi has passed order, terminating the petitioner from the
post of 'Assistant'

3. Annexure-3 in sum and substance is the order holding
the petitioner as ineligible and consequently service of the
petitioner was dismissed vide order dated 19.4.2004. The said
order was challenged by the petitioner before the Director,



Secondary Education, Patna and the Director, Secondary Education vide order contained in Annexure-2 dated 24.4.2008 which upheld the decision of the District Education Officer, Sitamarhi.

4. The said order of the Director was challenged in C.W.J.C. No. 3224 of 2004. Against the order contained in Annexure-2 the petitioner preferred appeal representation which was dismissed vide order dated 7.6.2011 by the Government.

5. Mr. Jha learned counsel for the petitioner submits that in the instant case the petitioner was initially appointed as a Clerk in the Kishori High School, Sitamarhi but when his service was not approved he approached the Director-cum-Additional Secretary for grant of approval of the service as Clerk.

6. Mr. Jha further submits that in fact at the instance of Government, the Director-cum-Additional Secretary, vide Annexure-9 has issued direction on 8.8.1984 to the District Education Officer, Sitamarhi to appoint the petitioner against the vacant post of Clerk with effect from 6.3.1984. The petitioner joined pursuant thereto and continued up to 2004.

7. Mr. Jha submits that the order contained in Annexure-3 is nullity in the eye of law. Firstly he submits that the petitioner was terminated after 20 long years without contemplating any



departmental enquiry in terms of Rule 309. He further submits that District Education Officer, Sitamarhi has absolutely no jurisdiction to sit in appeal against the decision of the Director even if the order contained in Annexure-9 treating the order to be passed by the Director and not by the Government.

8. Mr. Jha further submits that from perusal of Annexure-9, it appears that it would be evident that it is not the Director who has passed the order but the Director has simply communicated the decision of the Government.

9. In any view of the matter, he submits that District Education Officer, Sitamarhi cannot annul the decision of the Director that to after 20 long years without holding any departmental proceeding. He submits that the order contained in Annexure-2 and 3 are the orders on the same line and suffer from the same vice.

10. On behalf of the respondents submission has been advanced that the appointment of the petitioner was not in accordance with law and as such the order contained in annexure-3 dated 19.2.2004 does not suffer from any infirmity and illegality by the Appellate Authority vide order contained in Annexure-2 and 1 have not committed any error.



11. On consideration of rival submission, the court is of the considered view that rightly or wrongly the Director has passed order contained in Annexure-9 and only Director or superior Officer then Director can nullify the decision of the Director even if Annexure-9 is not taken as decision of the Government. The District Education Officer has no business to find fault with the decision of the Director taken 20 years back.

12. The Court also finds substance in the submission of Mr. Jha that after 20 long years of service, terminating the service of the petitioner without holding any enquiry under Article 311 (2) of the Constitution is unsustainable. Respondents cannot make departure in the present case and nullify the decision dated 8.8.1984 without any enquiry under Article 311(2) of the Constitution of India.

13. For the reason indicated hereinabove, the court does not approve the order contained in Annexure-3 passed by the District Education Officer, Sitamarhi and the order of Appeal contained in Annexure-2 and 1.

14. Accordingly, the order contained in Annexure-3, 2 and 1 is hereby quashed. The respondents are directed to reinstate the petitioner with consequential benefit.



15. The writ application is accordingly allowed and disposed of to the extent indicated hereinabove.

16. The quashing of the order will entitle the petitioner 50 per cent of back wages for the period 2004 till date.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.07.2018
Transmission Date	

