

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7185 of 2013

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SURENDRA PRASAD MISHRA SON OF LATE BHOLA NATH MISHRA
RESIDENT OF 206, KANKARBAGH COLONY, SLUMTYPE P.S.
KANKARBAGH DISTRICT PATNA

... .. Petitioner/s

Versus

1. Bihar School Examination Board, Patna Through Its Secretary
2. The Chairman, Bihar School Examination Board, Patna
3. The Secretary, Bihar School Examination Board, Patna
4. The Principle Secretary, Human Resource Development Department,
Government Of Bihar, Patna
5. The Director, Secondary Education, Government Of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binodanand Mishra
For the Respondent/s : Mr. Prahlad Kr. Bhagat

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 03-04-2018

This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ of certiorari to quash the office order contained in Memo No. 856 dated 12.09.2012 so far it relates to petitioner by which he has been reverted to the post of Routine Clerk from the post of Section Officer.

2. Briefly stated, the case of the petitioner is that pursuant to an advertisement No. 4/82 petitioner was appointed on daily wages on the post of Clerk on 21.01.1983. He was absorbed on the post of Assistant on 21.02.1986 by an ordinance promulgated on 20.05.1985 the council was superseded and the employees of council were absorbed in the State Government



Service and as per decision of State Government, the petitioner was appointed on the sanctioned post of Assistant in the scale of 284-372 with effect from 01.06.1985. Petitioner was granted Senior Selection Grade in the rank of Assistant with effect from 01.06.1990 and petitioner was promoted on the sanctioned post of Section Officer with effect from 02.06.1992 and thereafter petitioner is discharging his duty of Section Officer to the satisfaction of all.

3. The Bihar Intermediate Education Council (Repeal) Act, 2007 council was abolished and persons of council were to absorbed by Bihar School Examination Board and the employees of Council shall continue on the same salary and allowance as was payable on the date of repeal till such time State Government takes final decision.

4. Sub-Section (2) of Section 3 of the Repeal Act provided that State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of the employees of the Council. The Scheme as such prepared shall be placed before the Government within four months from the date of enforcement of present act.



5. The State Government by notification dated 02.07.2007 constituted a three member committee headed by Development Commissioner and Secretaries of Finance and General Administration submitted its action plan to the Government for necessary action on 09.04.2010 and employees who fulfilled the condition as framed by committee shall be absorbed in Bihar School Examination Board.

6. By Memo No. 785 dated 17.07.2012 a five member committee was constituted by the Bihar School Examination Board to identify the employees of the Council who were working on the date of its abolition i.e. 19.04.2007 and who are fit to be absorbed.

7. In the report it was held that 70 posts of Section Officers were sanctioned in the Council and no sanctioned post was vacant. 17 persons have been reverted to the post of Section Officer making the total strength 87 and since there are only 70 posts of Section Officer. 17 persons were required to be reverted to the post of Assistant. Petitioner has been shown to be working on the post of Section Officer, however, in the report employees who have been absorbed the petitioner has been shown in the list of employees who have been absorbed as Routine Clerk by the office order dated 12.09.2012. Reasons for reversion of



petitioner has been stated that at the time of his appointment he was not eligible to be appointed as Assistant.

8. It has been submitted that similarly placed person Sri Umanath Jha was also reverted to the post of Routine Clerk from the post of Section Officer and he filed C.W.J.C. No. 18473 of 2012 it was allowed by this Court and authorities were directed to post him as Section Officer or on any post equivalent to it and petitioner also represented that similar benefit should be extended to him as he was similarly placed, but no action was taken and, thereafter, present writ petition has been filed. The Committee recommended a provisional list of 379 employees for absorption in the board against the vacant post of the Board but only 207 posts were vacant in the board, as such, permission was sought from the State Government to increase the sanctioned strength of employees

9. It has been submitted by the respondents that petitioner was appointed on daily wage as Clerk for two months and by order dated 21.02.1986 he was appointed as Assistant with effect from 01.06.1986 and petitioner not having a requisite qualification of graduation for appointment on the post of Assistant. The petitioner was having Intermediate Qualification since 01.06.1985, as such, he was treated as



Routine Clerk and the services of petitioner has been adjusted as Lower Division Clerk. The representation of petitioner was considered by the three member Objection Removal committee and it was found that petitioner had no requisite education qualification i.e. graduation.

10. It has been further submitted on behalf of the respondents that after absorption of employees, there is no vacant post of Section Officer in the Bihar School Examination Board. The appointment of petitioner on the post of Assistant was not found proper, as such, he was absorbed as Lower Division Clerk.

11. A counter affidavit has been filed on behalf of the respondent Nos. 4 and 5 in which it has been stated that Bihar School Examination Board has been conferred jurisdiction to create post and to make appointments of its employees and to take disciplinary action against them under the provisions of Rule 9 (1) of Bihar School Examination Board, 1963. The Board shall be competent to create such post of officers and other employees as may be determined by it provided that no post maximum remuneration of which exceeds Rs. 745/- per month shall be created by the Board without prior approval by the State Government.



12. The Bihar School Examination Board in its counter affidavit had stated that against the judgment and order passed by the writ court they have preferred L.P.A. No. 658 of 2013 but same was dismissed on 20.03.2017 and case of petitioner being similarly placed, he is entitled for said benefit and against the judgment passed by Division Bench the Bihar School Examination Board had preferred SLP and same was dismissed on 15.09.2017, as such the issue has attained finality and petitioner is also required to be granted similar benefit,

13. Accordingly, the writ petition is allowed and order dated 12.09.2012 passed by the respondent Board, reverting the petitioner from the post of Section Officer to the Lower Division Clerk is quashed and it will be deemed that petitioner was never reverted to the post of Lower Division Clerk and continued to hold the post of Section Officer throughout. The writ petition stands disposed of in terms of judgment and order dated 19.12.2012 passed in C.W.J.C. No. 18473 of 2012, as affirmed by order dated 20.03.2017 in L.P.A. No. 658 of 2013, and also affirmed by the Supreme Court.

14. A supplementary counter affidavit has been filed on behalf of the respondents in which they have complied order passed in C.W.J.C. No. 18473 of 2012 and petitioner is also



entitled for similar benefit to be granted to him within 3 months
from production/receipt of order of this Court.

15. The writ petition is accordingly disposed of.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

