

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14552 of 2016

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Sanjay Kumar S/o Shri Nand Kishor Sharma R/o Village, P.O. & P.S.-
Kamalpura, Town & District- Muzaffarpur **... Petitioner**

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat, Patna.
2. Director (Secondary Education), Human Resources Development Department, Government of Bihar, New Secretariat, Patna.
3. Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. District Education Officer, East Champaran

... .. Respondents

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Appearance :

For the Petitioner : Mr. Shivendra Kishore, Senior Advocate
For the State : Mr. Amarendra Kumar, AC to Ag15

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-11-2018

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. It is submitted by learned counsel for the petitioner that the petitioner has been appointed after selection by the Divisional Establishment Committee in accordance with Rule 7 of the Ministerial Cadre (Appointment, Promotion and Transfer) Rules, 1974 (herein after referred to as 'the Rules 1974') by Office order bearing Memo no. 298 dated 18.6.1995 (annexure 2), issued by the Regional Deputy Director of Education (RDDE), Tirhut Division, Muzaffarpur. It is the submission of the petitioner that pursuant to his appointment he is in continuous service of respondents on Grade III post of clerk.



3. Case of the petitioner is that originally he was posted in the office of the Principal, Teachers Training College, Balmiki Nagar. Thereafter, due to un-availability of post, his service was relieved for the office of the RDDE, Tirhut Division, Muzaffarpur under letter dated 17.7.1995. Thereafter, the petitioner came to be appointed as a clerk in the office of the Sub Divisional Education Officer, West Champaran, Bettiah where he was continuously in service. Petitioner has been continuously working though it is submitted that he has never been paid any salary. In the said circumstance, the petitioner approached this Court by filing C.W.J.C.No. 14529 of 2012 claiming arrears of salary. The writ petition was filed after 17 years of alleged appointment. The writ petition was withdrawn by the petitioner for pursuing the departmental remedies as it is evident from order dated 7.9.2012, passed in C.W.J.C.No. 14529 of 2012.

4. Having availed of such remedy, the petitioner approached the authorities by making an application for payment of salary before the RDDE, Tirhut Division, Muzaffarpur who is the original appointing authority of the petitioner. The petitioner submitted that he has worked throughout for 17 years prior to making his application for payment of arrears and current salary. The RDDE, Tirhut Division, Muzaffarpur has rejected petitioner's



claim by order dated 27.11.2014 (annexure 1). Grant of salary to the petitioner was considered and it was found that there was no record in the office of the RDDE, Tirhut Division, Muzaffarpur to show that the petitioner was ever appointed on any sanctioned vacant post.

5. Claim of the petitioner for payment of arrears and current salary was rejected solely on the ground of unavailability of the records in the office of the RDDE, Tirhut Division, Muzaffarpur to show that the petitioner was ever appointed on any sanctioned vacant post. In so far as petitioner's claim that the Principal of the Teachers Training College, Balmiki Nagar relieved him for the office of the RDDE, Muzaffarpur due to non-availability of vacant post under order dated 17.7.1995. Such stand has already been found to be baseless as no such order dated 17.7.1995 has been issued by the Principal of the Teachers Training College, Balmiki Nagar. This issue has been inquired from the records of the college. Petitioner's claim for salary has been denied by the impugned order on the ground that the petitioner has not been able to substantiate his appointment.

6. Learned Senior counsel for the petitioner submits that in identical circumstances, one Anil Kumar Jha and Ravindra Kumar Tiwari were also appointed at the same time and in the



same manner. Relying upon annexure 6, i.e., order dated 21.9.2000, passed in C.W.J.C.No. 5003 of 1999 filed by Sri Ravindra Kumar Tiwary and order dated 10.1.2001, passed in C.W.J.C.No. 4815 of 1999, filed by Anil Kumar Jha it is submitted that in their case also the ground that the record relating to the appointment of the petitioner are not available in the office of the respondent had been taken. Same was not accepted by this Court. In this connection, the petitioner placed reliance also on the case of one Shivendra Kumar which was allowed on 4.4.2008 by this Court in the proceedings arising out of C.W.J.C.No. 6468 of 2000. Referring to the said order, it is submitted that in case of Shivendra Kumar a plea was taken regarding non-availability of records in support of his appointment, the same was rejected by this Court. Relevant portions of the order dated 4.4.2008 are re-produced herein below for easy reference:-

“On the other hand, the State in the counter affidavit has stated that the petitioner’s service was terminated in view of the letter no. 1445 dated 9.12.1998 issued by the Director, Secondary Education, Bihar, Patna. It is also stated that the record relating to “preparation of a panel of adopting reservation policy etc., is not available in the office of the present respondent.” In fact, the State has gone so far as to state the record relating to the appointment of the petitioner are not available in the office of the respondent, and as such, it appears that the appointment letter is prima facie false or fabricated.



In reply to the stand taken by the State, the petitioner has specifically stated in paragraph 17 of the reply to the counter affidavit (which is being quoted below) that the then District Magistrate, Muzaffarpur on assumption that he had the authority to make appointment of the ministerial staff of the office of the Education Department got an enquiry in the office of the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur by a senior Deputy Collector who after enquiry seized all the papers relating to the appointment made by the Regional Deputy Director of Education and thereafter criminal cases were lodged.”

It thus appears that some files were handed over to the Investigating Officer, and as such, it is submitted on behalf of the petitioner that it is absolutely false and misleading to state that the documents were not available in the office of the Department. One expects that while conducting an enquiry it is the duty of the Department after issuing a show cause to verify the documents produced by the petitioner with the originals which were supposedly lying with the Investigating Officer, and as such, it can not be said by the State that the documents were not available to the Department and therefore, the appointments were illegal or irregular.

The State has not controverted this fact as stated by the petitioner. It is clear from the facts that all appointments that were made after the recommendation of the Divisional Level Committee by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur. The petitioner in C.W.J.C.No. 5003 of 1999 was appointed in a similar manner before services had been terminated on the ground that the appointments were not in accordance with the Government Circular.”

7. Learned Senior counsel for the petitioner has laid emphasis on the said order to contend that the respondents cannot be allowed to take a different view on account of non-



availability of documents of appointment to contend that the petitioner was never appointed.

8. Order passed in case of Ravindra Kumar Tiwari, Anil Kumar Jha and Shivendra Kumar relied upon by the petitioner, are essentially different on facts. This Court would observe that in case of all the three persons there was specific order terminating their services long back. By the order of termination it is implied that said these employees had been appointed. In the case of the instant petitioner, other than the fact that he has produced the appointment letter dated 18.6.1995, one letter dated 17.7.1995, issued by the Principal, Teachers Training College, Balmiki Nagar purportedly relieving the service of the petitioner, there is nothing on the record. The authorities have not been able to locate any document in support of the appointment of the petitioner.

9. Conduct of the petitioner also speaks volumes in respect of the validity of appointment though it is contended that he was appointed in 1995, admittedly there is no order for payment of a single farthing to the petitioner by way of salary or wages. Whether such relationship of employer and the employee ever existed is not substantiated. The delay in approaching the



Court after such a long time, i.e., in the year 2012 for the first time also raises a serious doubt in respect of petitioner's claim.

10. Various documents which have been placed on record frima facie appear to have been issued by the authorities in respect of petitioner's appointment. The original appointment letter dated 18.6.1995 (annexure 2), issued by the RDDE, Tirhut Division, Muzaffarpur and the service book of the petitioner which is at annexure 3/2 and joining report dated 27.6.1995 (annexure 3) have not been considered by the RDDE, Tirhut Division, Muzaffarpur while passing order dated 27.11.2014. Whether the petitioner has worked for the entire period or not worked also does not appear to have been considered from the order issued by the RDDE, Tirhut Division, Muzaffarpur. These aspects were required to be looked into.

11. In view of the aforesaid circumstances, this Court would consider it appropriate that the petitioner may submit a detailed representation in support of his claim annexing these documents issued by the RDDE, Tirhut Division, Muzaffarpur within a period of four weeks from today. Regarding petitioner's claim for arrears of salary, the Court would observe that it would be subject to verification whether he ever performed any duty



during the long time. This Court is not expressing any opinion on the merits of the matter.

12. The limited issue which is being remanded to the RDDE, Tirhut Division, Muzaffarpur is to look into the veracity of the appointment and to examine the records whether he has discharged any duty pursuant to his alleged appointment on the post of clerk vide Memo no. 298 dated 18.6.1995 (annexure 2), issued by the RDDE, Tirhut Division Muzaffarpur.

13. The RDDE, Tirhut Division, Muzaffarpur shall take a final decision on the petitioner’s claim within a period of eight weeks from the date of receipt or a copy of this order.

14. Writ petition stands disposed of with the aforesaid directions.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	
CAV DATE	NA
Uploading Date	03.12.2018
Transmission Date	NA

