

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4326 of 2017

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Jawed Ahmed, Son of Late Sagir Ahmed, resident of village - Charuanwan,
P.S. Shekhopursarai, District - Shekhapura

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director (Primary Education), Education Department, New Secretariat,
Patna
3. The Director Magistrate, Shekhapura
4. The Deputy Development Commissioner, Shekhapura, District - Shekhapura
5. The District Education Officer, Shekhapura, District - Shekhapura
6. District Programme Officer (Establishment) Shekhapura, District -
Shekhapura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pratap Sharma, Advocate
For the Respondent/s : Mr. Umesh Narayan Dubey, AC to GP27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 14-03-2018

Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the State.

2. The petitioner is aggrieved by the order dated 2.2.2017 contained in Annexure-8 whereby the promotion granted to the petitioner has been cancelled holding that the petitioner is not found fit for grant of such promotion. In the impugned order two-fold reasons have been assigned (i) that the entry in the service book with regard to service verification and grant of increment for the period from 1.7.2001 to 24.2.2003 was done simultaneously in different handwriting and from different pen, whereas as per the rule the approval of increment and verification



of service are required to be done separately. (ii) the second objection for cancelling the promotion is that the petitioner has obtained the post graduate degree without obtaining prior permission.

3. Learned counsel for the petitioner has drawn the attention of the Court to Annexures 1 and 3 which indicate that there is no requirement of obtaining permission improving qualification. Annexure-1 indicates that petitioner has obtained necessary permission from the District Education Officer vide memo no. 1106 dated 30th November, 2006.

4. Considering the aforesaid the court is of the view that the cancellation of promotion of the petitioner on the ground that he has not obtained prior permission for obtaining M.A. degree appears to be misconceived. The other objection as to the entry in the service book regarding increment, the court is of the considered view that the petitioner cannot be faulted for the act or omission of the respondents. They are required to verify the increment in the service book. It is no bodies case that the verification of increment in service book is forged and fabricated.

5. Counsel for the State has placed reliance on para-10 of the order dated 3.10.2016 passed in CWJC No. 14100/2016 in which the Court made following observations.



“Learned senior counsel for the interveners informs the court that the District Magistrate has constituted a three member committee where large numbers of objections have been again received. If it is so, the Court directs that a final decision on the objections after the exercise is completed, must be taken by 31st of January, 2017 and a notification accordingly would be issued with regard to eligible persons. Those, who will lose out, will also be informed as to the reason.”

6. Learned counsel for the State submitted with reference to para-10 that the case of the petitioner was examined and on account of reason assigned in Annexure-8 to the writ petition, the promotion granted to the petitioner was cancelled.

7. After going through the materials on record and Annexures 1 and 3 and also considering the facts and circumstances of the case, the court is of the view that the cancellation of the promotion of the petitioner is without application of mind. The respondents have not considered the Annexures 1 and 3 to the writ petition. The entries made in the service book in different ink is not enough to disqualify the petitioner for grant of promotion. From the pleadings it appears that the petitioner has filed reply to the show cause dated 19.1.2017 but the explanation submitted on 25.1.2017 has not



been considered by the respondents while passing the order contained in Annexure-8 as there is no whisper in the order contained in Annexure-8 which shows that there is no application of mind in cancelling the promotion granted to the petitioner.

8. Learned counsel for the State submitted that although the order does not indicate that the show cause filed by the petitioner was considered in order to comply with the requirement there is provision for obtaining prior permission but the same has not been discussed in the impugned order. From the counter affidavit it appears that these are the factors which weighed in the process of promotion.

9. Law is well settled in this regard by the Constitution Bench decision of the Apex Court in the case of **Mahinder Singh Gill and another Vs. The Election Commission of India & Ors.: AIR 1978 SC 881** in which it has been held that the order cannot be supplemented by counter affidavit.

10. In view of the above, the Court does not find any substance in the submission of learned counsel for the State.

11. In the totality of the facts and circumstances discussed above, the Court is constrained to hold that the order contained in Annexure-8 is without application of mind and passed in complete disregard to the principles of natural justice



and as such the same cannot sustain. The order as contained in Annexure-8 is accordingly, quashed. The consequential benefits on quashing of order Annexure-8 must reach to the petitioner within a period of 60 days from the date of receipt/production of a copy of this order.

12. The writ petition stands allowed.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.3.2018
Transmission Date	

