

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13156 of 2018

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Devanand Singh, Son of Dashrath Singh, resident of Village- Mankoshi,
P.S.- Bodh Gaya, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Gaya.
3. Bihar School Examination Board through its Chairman, Budh Marg, Patna.
4. The Secretary, Bihar School Examination Board, Budh Marg, Patna.
5. The Vigilance Officer, Bihar School Examination Board, Budh Marg, Patna.
6. The District Education Officer, Gaya.
7. The District Programme Officer (Establishment), Gaya.
8. The Block Education Officer, Block Bodh Gaya, District- Gaya.
9. The Panchayat Secretary, Gram Panchayat Mortatal, P.S.- Bodh Gaya,
District- Gaya.

... .. Respondents

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Appearance :

For the Petitioner : Mr. P.K.Shahi, Senior Advocate

Mr. Vipin Kumar, Advocate

For the Respondent State: Mr. Jitendra Kumar Ray-1, SC-13

For the Respondent Board : Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-09-2018

A letter dated 07.05.2018 issued by the Vigilance Officer, Bihar School Examination Board (hereinafter referred to as 'the Board'), is being assailed in the present writ application whereby the earlier decision of the Board dated 25.08.2017 and press communique No.80/17 dated 27.08.2017, cancellation of the petitioner's result of matriculation examination has been justified as legal and in accordance with law.

This is to be noted that the Board's decision dated 25.08.2017 and press communique No.80/17 dated 27.08.2017, were



quashed by this Court by an order dated 19.12.2017 passed in C.W.J.C. No. 13807 of 2017, mainly on the ground of violation of principles of natural justice since the impugned action of the Board was based on a report of the District Education Officer, copy of which was not supplied to the petitioner before the decision was taken.

It is in the light of the order passed by this Court dated 19.12.2017 that impugned decision of the Board has been communicated to the petitioner. Counter affidavit has been filed on behalf of the respondent Bihar School Examination Board and a reply thereof has been filed on behalf of the petitioner, which are there on record.

In the nature of the controversy, arising out of rival pleadings on record, certain facts need to be taken note of in order to appreciate the main issues involved.

One Chandan Kumar and the present petitioner were applicants for the post of Panchayat Teacher in Moratal Panchayat, Bodh Gaya in the district of Gaya. The said Chandan Kumar was appointed as Panchayat Teacher, whose appointment was subsequently cancelled by the District Magistrate, Gaya on a complaint made by the petitioner and in his place the petitioner was appointed. The order of the District Magistrate was thereafter



challenged by Chandan Kumar before the District Teachers Employment Appellate Authority, the appellate authority had dismissed the appeal leading to filing of a writ petition by Chandan Kumar before this Court giving rise to C.W.J.C. No. 14603 of 2015, wherein Chandan Kumar took a specific plea that marks-sheet of the petitioner on the basis of which he came to be appointed as Panchayat Teacher was forged. While dismissing the writ application on the ground of delay and laches, this Court by order dated 17.09.2015 passed in C.W.J.C. No. 14603 of 2015 observed that the said Chandan Kumar might take steps against appointment of the petitioner as Panchayat Teacher in accordance with law. The Letters Patent Appeal preferred against the said order also came to be dismissed as withdrawn. These are the facts which are not at all in dispute. Chandan Kumar it appears, pursued the matter before the Bihar School Examination Board leading to issuance of the press communique dated 27.08.2017 cancelling the petitioner's result of matriculation examination. The reason why the Board has taken the decision of cancelling petitioner's result of matriculation examination can be traced from the statements made in the counter affidavit filed on behalf of the Board. It has been stated in the counter affidavit that the said Chandan Kumar had furnished the details with respect to the petitioner, namely, Deva Nand Singh and



his son Gautam Sagar Rana alleging that they had appeared in matriculation examination twice by changing their names and dates of birth and had obtained their matriculation result and certificates deceitfully in different years in order to obtain undue and unlawful advantage. Upon enquiry, the Board noticed that in 1975 supplementary examination Devnandan Singh had appeared with his Roll Code 4206, Roll No.362(X) and his date of birth 05.01.1959 was declared pass. By slightly varying his name as Deva Nand Singh with Roll Code 08125, Roll No.0180 with his date of birth as 02.01.1971, he again appeared and passed the matriculation examination with second division. It was also noticed by the Board that in similar manner Gautam Sagar Rana, who happens to be the son of the petitioner had passed matriculation examination in 1999 (Annual) and again in 2007 (Annual) with changed dates of birth. In order to verify the entire matter, the District Education Officer, Gaya, was asked to enquire into the same to find out as to whether Devnandan Singh and Deva Nand Singh were the names of the same person. The District Education Officer found the allegation to be correct. Based on the said report of the District Education Officer, invoking Regulations 18 and 19 of Chapter V of the Bihar School Examination Board Regulations, 1964, show cause notices were issued to the petitioner and his son Gautam Sagar Rana asking them



to explain as to why their subsequent results should not be cancelled for having appeared second time in matriculation examination with their changed names and dates of birth. The petitioner, it is said, did not respond. The Board took a decision on 25.08.2017 and issued press communique dated 27.08.2017 cancelling the petitioner's subsequent result. As has already been narrated above, in the absence of compliance of principles of natural justice, this Court had set aside the press communique dated 25.08.2017 and the decision of the Board to cancel the result of the petitioner, with the direction as noted above.

The petitioner was given a copy of the report of the District Education Officer with an opportunity to him to reply. He submitted his reply on 07.05.2018. The Board, not being satisfied with the reply of the petitioner to the show cause notice, issued the impugned letter dated 07.05.2018.

Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioner has drawn my attention to the said report of the District Education Officer dated 30.11.2016 submitted to the Bihar School Examination Board, which had been the basis for the Board to take decision of cancellation of the petitioner's result and has submitted that in the light of the nature of finding recorded by the District Education Officer, Gaya, the petitioner had demanded



certain documents for submitting an effective reply to the show cause notice as indicated in his letter dated 12.01.2018. It has been stated that without supplying the documents, as demanded, the impugned order has been passed. He contends that as is evident from the report of the District Education Officer, which is Annexure-C to the counter affidavit filed on behalf of the Board, the findings are recorded in the report is based mainly on voters' list. He contends that merely on the basis of the voters' list of 1975 and 1993 no conclusion could be reached that the two names were of the same person and without furnishing the documents which the petitioner had demanded, the impugned decision could not have taken.

Mr. Satyabir Bharti, learned counsel appearing on behalf of the Board has strenuously contended that the finding recorded by the District Education Officer is based on analysis of the materials available to him more particularly the electoral rolls of the concerned assembly constituency. He has drawn my attention to the relevant portion of the electoral rolls of 2015 of Bodh Gaya assembly constituency to submit that the petitioner's age has been shown in 2015 as 36 years at Sl. No. 874, whereas his wife's name Shati Devi finds place at Sl. No. 875 with her age as 32. He has also drawn the Court's attention to the entry at Sl. No. 873 of the said Voters' list, which bears the name of the petitioner's son Gautam



Sagar Rana with his age as 31. He also contends that the name of wife of Gautam Sagar Rana figures at Sl. No. 872 with her age as 30. He has next drawn my attention to the voters' list of 1975 to submit that name of Devnandan Prasad figures at serial no. 1421 with his father's name as Dashrath Mahto and age as 25. He asserts that the petitioner is, admittedly, son of Dashrath Mahto, whose wife's name is Malti Devi as is evident from 1975 voters' list. He goes on to submit that in 1993 voters' list, the petitioner's name figures as Deva Nand Singh and his age as 30 years with his wife's name Shanti Devi. Referring to these facts, he has attempted to persuade this Court that the petitioner has been indulging in committing fraud while appearing in the matriculation examination. He has submitted that this Court in a proceeding under Article 226 of the Constitution of India need not go into all these disputed questions of fact and the petitioner's remedy lies elsewhere.

I have gone through the pleadings on record and I have considered rival submissions made on behalf of the parties. It seems from the impugned letter dated 17.05.2018, that the petitioner had disputed the findings recorded by the District Education Officer on several grounds including the ground that his wife's name is 'Shakti Devi' and not 'Malti Devi' as entered in the voters' list of 1975. It is evident from the impugned letter that the finding that 'Devnandan



Singh' and 'Deva Nand Singh' are names of the same person, i.e. the petitioner, is solely based on the entries in the voters' list of 1975 and 1995. The petitioner had demanded from the Board, the proof in support of identity of Devnandan Singh, the documents relating to his passing in 1975 matriculation examination, namely, mark-sheet, roll code and roll number etc. The Board, however, refused to make available the documents on the ground, *inter alia* that the documents could be obtained from the office of the Board after making an application. The petitioner had demanded the original certificate of 1975 in respect of Devnandan Singh, to which the Board's response has been that original certificates are not issued in favour of the failed candidates. The petitioner had demanded the registration number and application filed by Devnandan Singh, in this regard, the response of the Board is that registration number is not mentioned in the tabulation register and application for registration is not maintained.

Mr. P.K. Shahi, learned senior counsel, appearing on behalf of the petitioner, in my view, is correct in his submission that the finding recorded by the District Education Officer, which has been accepted by the Board, that 'Devnandan Singh' and 'Deva Nand Singh' are the names of the same person is based on the entries made in the voters' list of different years. In the Court's view, only



the voters' list could not have been the basis in recording the said finding.

It is true that this Court does not enter into disputed questions of fact in a proceeding under Article 226 of the Constitution of India, but at the same time in writ jurisdiction, this Court is required to ascertain whether the decision making process suffers from any illegality and the findings are based on cogent material(s). This is not in dispute that the petitioner had demanded for supply of certain documents for the purpose of filing his effective show cause reply in view of the nature of findings recorded by the District Education Officer. If according to the Board, those documents were not relevant for just adjudication, the Board ought to have informed the petitioner before passing final order. In the present case, on the application made by the petitioner for supply of documents, the Board has issued the letter justifying its earlier decision. Earlier decision, which came to be quashed by this Court, could not have been justified, since the decision was quashed by the High Court for violation of principles of natural justice.

The impugned letter for the reasons stated above, requires interference, which is accordingly set aside. The Board, is directed to take a decision afresh by following a procedure, which is being laid down hereunder:-



(i) Out of the seven documents, which the petitioner had demanded, the Board's comment in respect of each of them is available in the impugned letter. In respect of Item No. 2, the Board has mentioned that the petitioner could obtain marks-sheet, roll code and roll number of Devnandan Singh of 1975 Matriculation Annual Examination. Let the Board supply to the petitioner the marks-sheet of the said examination within a fortnight from the date of receipt/production of the present order.

(ii) In view of the comment of the Board that certain documents/registers/informations were not maintained in 1975, the petitioner shall not insist on supply of such documents.

(iii) The petitioner shall be required to file his reply to the show cause notice within 15 days from the date of supply of information by the Board as indicated in (i) above. In case, no show cause reply is submitted, the Board will be required to pass order afresh immediately thereafter. The petitioner shall have no liberty thereafter to raise any plea of violation of principles of natural justice against the decision of the Board.

(iv) The petitioner will be required to disclose clearly in his show cause reply, his parentage and the names of his sons and daughters, if any.



(v) After having received the show cause reply of the petitioner, the Board will be at liberty to require District Education Officer to get an enquiry conducted on local level through Block Development Officer/Circle Officer, who shall be required to conduct enquiry in presence of the petitioner. The Block Development Officer/Circle Officer, as the case may be, will be required to submit his report expeditiously preferably within 15 days of communication by the Board for such enquiry. The Court expects that the enquiry will be held by the Block Development Officer/Circle Officer in the petitioners village itself. In any event, the enquiry must be concluded by October 31st.

(vi) Once the enquiry is completed by the Block Development Officer/Circle Officer, the said report shall be made available to the petitioner.

(vii) The Board will thereafter take decision on the basis of said report and any other material on which the Board intends to rely, after giving the petitioner again an opportunity to deal with the said report and other materials on which the Board's intends to rely. The Board will be at liberty to take its own decision by reaching a conclusion, irrespective of the findings recorded by the Block Development Officer/Circle Officer. If such report is found to be favourable to the petitioner and the Board intends to take a different



view, then the Board shall be required to record reasons and inform the petitioner the reasons for differing with the opinion of the Block Development Officer/Circle Officer.

(viii) Needless to say that if the decision of the Board again goes against the petitioner, the Board's decision must contain reasons. Once a decision is taken by the Board by following the procedure indicated in the present order and the petitioner's grievance still remains, he shall have liberty to file the suit before a civil Court of competent jurisdiction, keeping in view the nature of disputed questions of facts involved.

The entire exercise must be concluded by the last week of November, 2018.

This application is accordingly allowed, but with the above noted observations.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/Ashish

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	.09.2018
Transmission Date	N/A

