

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20005 of 2013

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Dharamraj Singh Son Of Late Sheo Shankar Singh Resident Of Village -
Done, Police Station - Darauli, District – Siwan. Petitioner/s

Versus

1. The State Of Bihar Through The Director Primary Education Cum Special Secretary, Government Of Bihar, Patna
 2. The Director Primary Education Cum Special Secretary, Government of Bihar, Patna
 3. The Deputy Director Primary Education Cum Special Secretary, Government Of Bihar, Patna
 4. The Inspector Of School, Siwan
 5. The Deputy Inspector Of School, Siwan
 6. The Deputy Superintendent Of School, Siwan
 7. The Head Master Of Town Madhya Vidyalaya, Mairwa, District Siwan Resident Of Village - Done, Police Station - Darauli, District - Siwan
 8. Kumari Vidyawati Daughter Of Sri Sugiwa Singh Resident of Village - Done, Police Station Darauli, District – Siwan. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Satya Nand Shukla, Advocate
For the Respondent/s : Mr. Sunil Kumar, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 22-11-2018

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

2. Petitioner has earlier approached this Court in
C.W.J.C. No. 455 of 1984. The said application was disposed of
on 10.4.1996. After the order dated 10.4.1996 the respondents
rejected the representation of the petitioner for recognition of
the service as teacher vide memo no. 1847 dated 28.8.1996.
Thereafter, petitioner filed C.W.J.C. No. 740 of 1997. The said
application filed by the petitioner for the purpose of recognition
of service after take over of the school was allowed with



direction vide order dated 22.12.2008. The State preferred the appeal against the order dated 22.12.2008 which was disposed of vide order dated 28.7.2011. For ready reference the order dated 22.12.2008 passed in C.W.J.C. No. 740 of 1997 and the order dated 28.7.2011 passed in LPA No. 908 of 2009 is quoted hereinbelow:-

This application is for quashing the order dated 28th August, 1996 as contained in Annexure-1 rejecting the representation of the petitioner for recognizing his services as Government teacher and consequential relief of payment of due salary. In course of hearing, the learned senior counsel for the petitioner confined his prayer with regard to the payment of salary as an Assistant Teacher with effect from the date the school in question was taken over by the State as per the notification dated 31st May, 1983 as contained in Annexure-6 read with the recommendation of the District Nationalization Committee in its meeting dated 12th September, 1977 as contained in letter no. 691 vide Annexure-5 of the application. The petitioner claims that since the school in question i.e. Town Medhya Vidyalaya, Mairwa was taken over on the basis of the recommendation of the District Nationalization Committee as contained in Annexure-5 followed by the notification issued by the respondent-



State on 31st May, 1983, therefore, the petitioner having been appointed on 21st May, 1970 in terms of the resolution of the Managing Committee of the aforesaid school and joined in the said school on 1st July, 1970 as directed as per letter no. 78/70 dated 05.06.1970 (Annexure-2) was entitled to get the salary in the untrained scale with effect from the date when the school was formally taken over by the State Government in terms of Annexure-6.

The short facts is that the petitioner was appointed as an Assistant Teacher, Managing Committee of the aforesaid school as per the resolution on 21.05.1970 and as per letter no. 78/70 dated 05.06.1970 vide Annexure-2 joined on 1.07.1970. However, while sending the list of the teachers at the time of taking over the school by the State Government, the concerned Head Master did not include the name of the petitioner. Nonetheless, the petitioner although continued to discharge the duty of a teacher, he was not being paid the salary payable to the untrained teachers on the wrong presumption that the services of the petitioner was not taken over. Petitioner represented but since the representations filed by him remained undisposed, filed a writ petition in this court vide C.W.J.C. No. 455 of 1984 which was finally disposed of by order dated 10th February 1996, as contained in Annexure-8 of the writ application. The court permitted the



petitioner to file a fresh representation since the claim of the petitioner was an old one. The representation was filed as contained in Annexure-9 and the same was however, rejected by the Director of Primary Education as per the impugned order dated 20.08.1996 Vide Annexure-1.

It is contented on behalf of the petitioner that as regards his appointment on the post of Assistant teacher on conjoint reading of the letter dated 5.06.1990 vide Annexure-2 read with the details with regard to the recognition of Town Madhya Vidyalaya, Mairwa duly signed by the Head Master of the School, as well as, the Secretary of the Managing Committee of the said school as also the Deputy Inspector of School, Siwan on 25.05.1974 vide Annexure-10 it would appear that the date of appointment of the petitioner is 21st May, 1970 and followed by the similar entries in the documents regarding recognition of the said school as contained in Annexure-11 which has been signed by the Secretary of the Managing Committee of the School as well as the Head Master on 5th January, 1977 vide Annexure-11 in which also the date of appointment of the petitioner is 21st May, 1970. Apart from the aforesaid documents learned counsel for the petitioner also relies upon his service book, copy of which has been annexed as Annexure-12 series duly signed by the Deputy Inspector of School,



Siwan on 06.05.1980 in which it is categorically mentioned the date of appointment of the petitioner which is of before 01.01.1971 when Bihar Non-Government Elementary Schools (Taking over of Control) Act 1976 came into force. The petitioner on the basis of the above documents submits that his appointment was undisputedly made on 21st May, 1970 and not after 01.01.1971 as alleged. In this connection learned counsel further relies upon the provision of Sub Section(2) of Section 4 of the aforesaid Act which is quoted below:- Sub Section (2) of Section 4:-

“Every officer, teacher or other employee holding any office or posts in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government”

Therefore, the submission of the petitioner is that since he was appointed prior to 01.01.1971 when



the aforesaid Act came into force therefore, the school on being taken over by the State in terms of the notification dated 31.05.1983 vide Annexure-6, the services of the petitioner is also transferred to the State Government from the date the school was taken over, as such, entitled to the salary on untrained scale as he was untrained. The petitioner submits that the stand of the State that since petitioner was not appointed prior to 01.01.1971 is not entitled to the reliefs prayed for gets disapproved on the basis of at least the aforesaid documents contained in annexures 10, 11 and 12 referred to as above. Learned counsel appearing for the State submits that in view of the decision of the Hon'ble Supreme Court in the Case of State of Bihar Vs. Laldeo Prasad Yadav vide Civil Appeal No. 847 of 1994 disposed of on 21st January, 1994 annexed as Annexure-A to the counter affidavit as also order passed in S.L.P. No. 2446 of 1995 vide Annexure-B, petitioner cannot be said to be a Government Servant in terms of Sub Section (2) of Section 4 of the aforesaid Act for the simple reason that the petitioner was appointed after 1.1.1971 as an untrained teacher. However, learned counsel is not in a position to refute the documents relied on by the petitioner as contained in Annexures-10, 11 and 12 as referred to above in support of the contention that he was appointed on 21st May 1970 i.e. prior to 01.01.1971. No affidavit in reply has been filed on



behalf of the State disputing the above documents.

Learned counsel appearing for the petitioner submits in reply that the aforesaid two decisions/orders of the Hon'ble Supreme Court as contained in Annexure-A and Annexure-B are not applicatble in the facts of the present case. Admittedly, the petitioners in the aforesaid two cases were appointed after 01.01.1971 whereas the petitioner in the instant case was appointed prior to 01.01.1971 before the aforesaid Act of 1976 came into force and as such, those two decisions of the Hon'ble Supreme Court are of no help to the State. Considering the submission of the parties and the pleadings on the record and the documents vide Annexure-10, 11 and 12 series it appears that there remains no dispute between the parties that the petitioner was appointed prior to 01.01.1971, the date of enforcement of the aforesaid Act in the light of the documents contained in Annexure- 10, 11 and 12 series which are not disputed by the State neither during the hearing nor by filing any affidavit as noticed above. It is also not in dispute that the petitioner was untrained teacher at the time of taking over the school and remained untrained.

In the above circumstances, it appears that the school in question was taken over by the State vide Annexure-6 the services of the petitioner who was admittedly working in school as Assistant Teacher in terms of the provisions contained in



Sub Section (2) of Section 4 of the aforesaid Act of 1976 got transferred in the service of the State Government. The state as such, cannot deny its liability to pay the salary of the petitioner on untrained scale w.e.f. the date of taking over of the school in question vide notification dated 31st May 1983 as contained in Annexure-6. The impugned order dated 20.08.1996 vide Annexure-1 is accordingly quashed. Respondent-State is directed to consider the services of the petitioner as untrained teacher of the State Government with effect from 31.05.1983 and make admissible payments towards the salary and allowances with effect from the date the other similar teachers were paid on the untrained scale of pay, preferably within a period of three months from the date of receipt/production of the certified copy of the order. The writ application is accordingly allowed with the above directions.

In appeal preferred by the State LPA Court passed the following order:-

In the writ petition C.W.J.C. No. 740 of 1997 filed by respondent herein claim of the respondents seems to be with regard to rejection of the representation vide Annexure-1 dated 21st August, 1996 which was the outcome of order passed by this Court in C.W.J.C. No. 455 of 1984 dated 10th February, 1996 i.e., the earlier writ petition filed by the respondents herein. Claim of the respondents is that their services



were taken over by the State Government by virtue of enactment of the Act in the year 1976 which came into force from 1.1.1971. In the earlier writ petition filed by the respondents i.e., C.W.J.C. No. 455 of 1984, a direction was given to the authorities to consider his representation. Accordingly the representation was rejected. Even though many disputed facts have arisen for consideration before the learned Single Judge, but the learned Single Judge was of the opinion tht a direction can be issued to the State to consider the services of the respondents as untrained teacher with effect from 31.05.1983 and make admissible payments towards the salary and allowances with effect from the date other similarly situated teachers were paid on the untrained scale of pay within a period of three months. Aggrieved by such direction the State has preferred the present appeal.

Learned counsel appearing for the State has vehemently contended that the services of the respondents were never recommended for taken over as he was untrained teacher appointed by the management of the concerned school and in all the documents which are produced by the respondents were forged one. The said statement has also been made in the counter affidavit filed before learned Single Judge in the writ petition. The above statement has been repeated before the learned Single Judge and also before us by



producing a Register of the school and also the recommendation of the then Managing Committee of the school recommending the name of the respondents. It is also stated in the impugned order at Annexure-1 that even though opportunity was given to respondents to produce the documents in support of their claim that they were working in the school since 1.1.1971 onwards but they failed to produce such documents. The learned counsel appearing on behalf of the respondents has submitted that even though the respondents has submitted their documents in support of their claim but the authorities have never looked into such documents. The learned senior counsel appearing on behalf of the Managing Committee has also disputed the factum of their appointment under the management of the private school.

In view of lot of dispute arisen in this particular case, we are of the opinion that it would suffice, if a direction is issued to the Director, Primary Education-Cum-Special Secretary to look into the matter afresh after verifying all the documents in support of the claim of the respondents and also by affording an opportunity of hearing to them. Liberty is also granted to both the respondents and Management of the school to produce their documents in support of their claim before the Director, Primary Education-Cum-Special Secretary and it is also made clear that the



Director shall look into the documents and pass an appropriate order. The entire exercise should be completed within a period of six months after giving opportunity to all concerned and also by issuing an advance notice to all the parties. With the above direction the order of the learned Single Judge is set aside and the L.P.A. is accordingly allowed to the extent indicated above.

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3. After the order of LPA Court contained in



Annexure-11 the claim of the petitioner was rejected by the respondents vide order dated 6.5.2013.

4. From perusal of the order contained in Annexure-13 dated 6.5.2013, it appears that Director proceeded on the basis of suspicion and he held out that from perusal of the service book the signature of the Dy. Inspector of the School was found in different style and as such there is suspicion on the authenticity of the document. However, on the same document, the then Headmaster of the school who was invited by the Director for the purpose of the deciding the claim of the petitioner has admitted that the document is genuine and he also admits signature on the document, however, he has explained that he has signed on the document under threat. The Director proceeded on the basis of previous decision dated 23.8.1996 and finally rejected the claim of the petitioner.

5. In the aforesaid background the present writ application was filed by the petitioner. This Court while hearing the parties on different dates at length has asked the respondents to file counter affidavit with regard to authenticity of Annexure-2 and 3 which is document of the respondents which admits not only take over of the assets and liability but admits that the petitioner was a teacher at the time of take over of the school.



From the order dated 11.9.2018 it would be evident that no affidavit was filed to dispute the authenticity of Annexure-2 and 3.

6. On 9.10.2018, the said order was passed which is reproduced for ready reference:-

“The writ petition was heard on different dates.

With regard to the discrepancy in Annexure-2 and 3, the stand of the respondents vis-a-vis the documents issued by the officers of the respondents, the case was adjourned with a view to provide one more opportunity to the respondents to defend the case.

Counter affidavit in pursuance of the order dated 28.08.2018 has been filed but unfortunately no one on behalf of the respondents is present to assist the court.

Learned counsel for the petitioner is present.

Counter affidavit filed does not answer the specific query with reference to Annexure-2 and 3. Earlier, the petitioner approached this Court in CWJC No. 455 of 1984 which was disposed of on 10.4.1996 with a direction to the respondents to decide the representation filed by the petitioner.



Thereafter, the petitioner had approached this Court in second round of litigation by filing CWJC No. 740 of 1997. Again the respondents were directed to take appropriate decision. Unfortunately, even the second round of litigation did not yield any result. Now, the petitioner has approached for the third time by filing the instant writ petition as the respondents in second round of litigation have rejected the claim of the petitioner vide order dated 06.05.2013.

In the documents enclosed by the respondents in the counter affidavit to refute the claim of the petitioner, in fact there is no answer to the question by this court as those documents are documents to the State and there is no explanation how the State Authorities have issued those documents acknowledging the appointment and continuance of the petitioner in the school in question at the time of take over.

Prima facie, this court is of the view that the action of the respondents rejecting the claim of the petitioner is contrary to the record and demonstrating the mindset of the respondents, that is, institutional bias in upholding their own illegal decision even after repeated



remand by this Court.

Considering the time constraint, the case is adjourned for 6th November, 2018. On that date, the Court will finally decide the matter.”

7. On behalf of the respondents, the claim of the petitioner has been disputed. The basis of dispute is primarily suspicion. They have not disputes the authenticity of the document which was relied upon by the petitioner for the purpose of demonstrating that at the time of take over he was working in the school and his service alongwith other teachers were taken over. The other documents available on record would indicate that they have not disputed the authenticity of the document of take over and the documents showing that the petitioner was working at the time of take over of the school. Plea has been taken by the respondents that petitioner could not have been regularized as he was not trained at the time of take over. The respondents have not disputed the facts that this Court in C.W.J.C. No. 740 of 1997 has noted the fact that petitioner was appointed in terms of Managing Committee resolution on 31.05.1970 and he was entitled to get the salary of untrained scale.

8. In the year 1970 untrained teachers were also entitled to appointment and regularization of their service. Even



if, there is dispute as to the date of appointment. There is no dispute as to the authenticity of Annexure-2 and 3 which is dated 1.1.1976 and 31.2.1977 which admits the continuance of the petitioner as teacher in the school.

9. From the material available on record, it appears that respondents consumed enough time in taking decision and now there are disputing the claim of the petitioner for recognition of service on the basis of suspicion. Suspicion howsoever strong can not partake character of proof and cannot be a ground to deny the claim of the petitioner for approval of the service.

10. Learned counsel appearing on behalf of the respondents would submit that attendance register on which the petitioner has placed reliance is not the common attendance register but separate attendance register the explanation of the then Headmaster admits that he has signed the same document (Separate attendance register) and as such does not discredit the claim of the petitioner for continuity in service and rendering service in the school.

11. The school in question was taken over in the year 1977. We are in 2018. The petitioner has attained the age of superannuation on 31.1.2011 and this writ petition remained



pending for the last five years.

12. The Court in order to balance the equity directs the respondents to recognize service of the petitioner as teacher of school with effect from take over the school and work out the entitlement of the petitioner for payment of salary @ 40 per cent from the date of take over of the school till the date of superannuation and also ensure payment of pensionary benefit.

13. Necessary decision in this regard may be taken by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

14. With the aforesaid, the writ petition stands allowed and disposed of. However, there shall be no order as to the cost.

(Anil Kumar Upadhyay, J)

Ravi/-

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

