

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.50 of 2015

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1. Rohit Das, son of Sri Dhirju Das, resident of village Kashraidih, P.S. Chandramandi, Dist. Jamui.
 2. Rohan Yadav, son of late Paddu Yadav, resident of village Bone, P.S. Chandramandi, Dist. Jamui.

... .. Appellants

Versus

1. The State of Bihar through Principal Secretary, Human Resource Department, Government of Bihar, Patna.
2. Principal Secretary, Human Resource Dept., Govt. of Bihar, Patna.
3. District Education Officer, Jamui.
4. District Program Officer (Establishment), Jamui.
5. Block Niyozan Unit, Chandramandi, Chakai through its Secretary, Block Education Extension Officer, Chandramandi circle, Chakai, Jamui
6. Block Education Extension Officer, Chandramandi, Chakai, Jamui.
7. Panchayat Niyozan Unit, Madhopur, Chandaramandi, Chakai, Jamui, through its Member Secretary.
8. Panchayat Secretary cum member Secretary, Panchayat Niyozan Unit, Madhopur, Chandramandi, Chakai, Jamui
9. Mukhiya, Gram Panchayat Madhopur, Chandramandi, Chakai, Jamui.
10. Head Master, Upgraded Middle School, Kishan Jori, Educational Circle - Chandramandi, Chakai, Jamui.
11. Head Master, Upgraded Middle School, Baune, Educational Circle - Chandramandi, Chakai, Jamui.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Mritunjay Kumar, Adv.
For the Respondent/s	:	Mr. Yogendra Pd. Sinha, AAG 7
		Mr. Rakesh Ambastha, AC to AAG 7

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 17-01-2019

Heard Mr. Mritunjay Kumar, learned Counsel for the appellants and Mr. Rakesh Ambastha, learned AC to AAG 7.

This intra-Court appeal arises from the judgment and order dated 20.10.2014 of a learned Single Judge passed in CWJC No. 10282 of 2013, whereby the writ petition was dismissed as



according to the learned Single Judge the Intermediate qualification obtained by the appellants-petitioners from the Gurukul Vishwavidyalaya, Vrindavan, Mathura, U.P. was not recognized by the Education Department of the Government of Bihar for holding the post of a Panchayat Teacher.

It is not in dispute that save and except stoppage of salary on this count, the respondents took no steps for termination of services of these appellants and it is because the salary was stopped that they moved this Court through the writ petition in question and while the writ petition was pending that an order was passed by the District Education Officer, Jamui bearing memo no. 1040 dated 03.08.2013 directing the appropriate authorities to terminate the services of the petitioners, as according to him the Intermediate qualification obtained by these two appellants were from a fake institution. It is again not in dispute that this order of the District Education Officer, Jamui remained a paper transaction because no follow up action was taken by the concerned authority connected with the appointment of Panchayat Teachers for examining the issue of fake certificates and for consequent termination of service of the petitioners.

The affidavits on record would confirm that the pay of the appellant- petitioner no. 2 Rohan Yadav was stopped from



April, 2007, and that of the appellant petitioner no. 1 was stopped from March, 2010. It is in such circumstances that the writ petition was filed and since learned Single Judge has refused to grant indulgence on the prayer made by the appellants-petitioners for payment of salary that they are before this Court.

According to learned Counsel for the appellants, while the appellant no.2 discharged duties until disposal of the writ petition, in so far as the appellant no. 1 is concerned, he continues to do so. It is feeling aggrieved by the judgment/order of the writ Court that both of them are before this Court.

It is having noted the submissions so advanced by the contesting parties that we have passed a discussed order on 05.12.2018 taking note of some important aspects of the matter which we found relevant to the issue canvassed, namely:

(a). No termination order had yet been passed despite the order of the District Education Officer dated 03.08.2013;

(b). While the appellant-petitioner no. 1 Rohit Das continues on his post, appellant-petitioner no. 2 Rohan Yadav has worked on his post until 2014 whereafter according to the learned Counsel representing them, he was restrained from putting his signature, perhaps because of the dismissal of the writ petition;



(c). Both the appellants have since obtained the Intermediate qualification by appearing in an examination conducted by the Bihar School Examination Board, Patna and had come out successful, the certificates of which are enclosed at Annexure R/3 series to the reply to the counter affidavit filed on behalf of the appellants in the present appeal;

(d). Vide judgment and order passed in CWJC No. 3700/2009 (**Indu Devi Versus the State of Bihar & Ors.**) the provisions mandating obtaining of the Intermediate qualification by a Panchayat Shiksha Mitra on their absorption as Panchayat Teacher by virtue of enforcement of the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules') with effect from 01.07.2006 within a period of 33 months since thereafter, was held to be directory in nature and which opinion of the learned Single Judge has been affirmed in Letters Patent Appeal in LPA No. 1247 of 2009 (**the State of Bihar & Ors. Vs. Indu Devi**). Learned Counsel for the appellants on the same issue has also relied on a judgment passed by learned Single Judge in CWJC No. 9628/2009 (**Ajay Kumar Yadav & Ors. Versus the State of Bihar & Ors.**);



(e). Undisputedly even if an order was passed on 03.08.2013 by the District Education Officer to terminate the services of these appellants, it has not been terminated and they continue to be in service;

(f). Although these appellants were not being paid their salary as indicated above, but by virtue of an order passed by the Division Bench in the present proceedings on 14.07.2017 that appellant no. 1 is being paid his salary.

The factual aspects of the matter indicated above, are undisputed, rather is an admitted position. The position as it stands is that before the respondents in their usual laid back attitude, could act upon the direction of the District Education Officer to terminate the service of the appellants, the appellants have acquired requisite Intermediate qualification to hold the post of Panchayat Teacher. A ghost was again sought to be created by the State Counsel to question the genuineness of the certificates and since the issue involved public office, this Court permitted them to examine the genuineness of the certificate by our order dated 19.12.2018. The situation does not change because the State fairly accepts that the Intermediate qualification obtained by the two appellants are genuine. Meaning thereby, the two appellants are fully qualified to hold the post of a Panchayat Teacher. In such



circumstances the direction of the District Education Officer, Jamui dated 03.08.2013 not having been acted upon before the appellants-petitioner acquired the Intermediate qualification making them eligible to continue on their post of Panchayat Teacher, it has lost its force and cannot be acted upon now.

That no termination orders have been passed and while appellant-petitioner no. 1 continues on his post, appellant-petitioner no. 2 is stated to have discharged his duty until 2014, while this Court would direct the respondents to allow continuance of the appellant-petitioner no. 1 on his post, this Court alongside would also direct the concerned respondent to forthwith reinstate the appellant-petitioner no. 2 on his post and allow him the consequential benefits.

In so far as payment of salary for the past period in question is concerned for which these two appellants had in fact approached this Court, the concerned authorities competent to do so would examine the grievance and since there is already a direction of this Court on 14.07.2017 to make payment of the salary to the appellants for the period they have discharged their duties, let the same be examined and admissible payments towards the salary be made to the appellants-petitioners for the period that



they have discharged duties, within a period of three months of the receipt/production of a copy of this order.

The order of the learned Single Judge passed on 20.10.2014 in CWJC No. 10282/2013 is set aside and consequentially the writ petition is allowed.

The appeal is accordingly allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.02.2019
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