

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14571 of 2014

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Shashi Bhushan Singh S/o Krishnandan Singh Resident of Fort Area, near
Forest Office, Post Munger, P.S. Kotwali, District Munger.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Human Resource Development Department, Govt. of Bihar, Patna.
4. The Special Director, Government of Bihar, Patna.
5. The Regional Deputy Director of Education, Munger Division, Munger.
6. District Education Officer, Munger.
7. The District Programme Officer Establishment, Munger.
8. The Managing Committee, M.W.E. High School through its Secretary, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Adv. Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. S.S.P. Yadav, SC-14,
For the Resp. No.8.	:	Mr. Irshad Ahmad Khan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 16-07-2019 Heard learned counsel for the petitioner and the

counsel appearing on behalf of the State.

This writ petition was filed after service of two advance copy to the office of advocate general. This Court has granted indulgence on 27.08.2018 to the respondents when notice was served on the respondent no.8. We are in 2019, nearly five years have gone. The respondents have chosen not to file counter affidavit. Since, the respondents have not filed any counter affidavit the Court is left with no option but to decide



the present application on the principles of non traverse and the judgment of the Apex Court in the case of ***Smt. Naseem Bano Vs. State of U.P. and Ors. AIR 1993 SC 2592.***

The averment made in the writ application has not been controverted by filing counter affidavit, therefore, this Court has to proceed and decide the writ application as if the averment made in the writ application has been admitted by the respondents.

Mr. Yadav, learned counsel appearing on behalf of respondents submits that the petitioner has filed the instant writ application for two reliefs, one for payment of salary, the other challenging the order of termination and submitted that both the reliefs cannot be granted in one writ application.

The Court in the facts of this case is of the considered view that the objection of the State Counsel is totally misconceived, if the order of termination is in teeth of the law as it is without the approval of the Director in terms of the Rules then the petitioner would be entitled to the consequential benefits in the nature of payment of salary including back wages.

The brief facts for the purposes of deciding in the present writ application is that petitioner was appointed as



Assistant Teacher in the school in question on 21.04.1994, after appointment of the petitioner approval of the Bihar Vidyalaya Sewa Board was solicited. The Vidyalaya Sewa Board granted approval of the service of the petitioner Shashi Bhushan Singh alongwith Md. Tarik Parvez.

Mr. Tej Bahadur Singh, learned Senior counsel appearing on behalf of petitioner submits that after the approval of the service of the petitioner, the petitioner continued in the school and rendered regular service as Assistant Teacher. On account of dispute of two Managing Committee, petitioner has been targeted in this case and when the new managing committee came in power petitioner has been penalised. The issue of payment of salary was raised before District Programme Officer as well as the District Education Officer but the grievance of the petitioner was not redressed by the authorities who have the primary responsibility to protect the interest of the teachers in minority institution.

Learned counsel appearing on behalf of petitioner submits that instead of payment of salary the respondents took decision to terminated the service of the petitioner on the allegation that he has obtained service on the basis of forged certificate and cheating the department. Such decision was taken



without any enquiry and opportunity of hearing to the petitioner.

Mr. Singh submitted that in terms of the service condition rule which is applicable to minority institution as well the approval of the decision of termination is a condition precedent but the order of termination contained in Anneuxre-1 was never approved by the Director, Secondary Education as the decision of the Managing Committee was never placed before the Director for approval. He submitted with reference to the statutory rule that in the absence of approval by the Director the order of termination cannot take effect. The statutory provision is very clear as to requirement of approval of the Director, since the petitioner was appointed in the school in question by the Managing Committee and his service was approved by the Vidyalaya Sewa Board, the action of the respondents terminating the service cannot be given effect to without approval by the competent Director of the Secondary Education.

Under the aforesaid circumstance, the order dated 12.08.2014 contained in Annexure-1 cannot be treated as valid order of termination. The order dated 12.08.2014 contained in Annexure-1 is accordingly quashed as a result of quashing of Annexure-1, the petitioner shall be deemed to be service in the school in question and petitioner shall be entitled to payment of



full salary from March, 2013 to 12.08.2014 and 75% salary for the period 12.08.2014 till date. The respondents including the District Education Officer is directed to take steps for payment of dues salary as indicated herein above within a period of three months from the date of receipt/production of copy of this order.

With the aforesaid, the present writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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