

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.379 of 2018
In
Civil Writ Jurisdiction Case No.15852 of 2006

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Naresh Kumar Sinha, S/o Sri Anandi Prasad, R/o Mohallah-Jitu Lal Lane,
Chowkshikarpur, P.S.-Chowk, Patna City, Town and District-Patna. At Present
R/o Abulash Lane, Last House, Machua Toli, Bankipore, P.S.-Pirbahore,
District-Patna-800004.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Secondary Education, Bihar, Patna.
3. The Director (Secondary Education), Bihar, Patna.
4. The District Education Officer, Patna.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Arun Kumar Sinha, Advocate Mr. Amit Narayan, Advocate Mr. Ajit Narayan Lal, Advocate
For the Respondents	:	Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 17-05-2019

The present appeal has emanated out of a common judgment and order passed in C.W.J.C. No.15852 of 2006 (Naresh Kumar Sinha Vs. State of Bihar & Others) and C.W.J.C. No.10461 of 2007 (Sanjay Kumar Sinha Vs. State of Bihar & Others), whereby and whereunder the learned single Judge has dismissed both the writ applications, which have been filed challenging the orders of termination of the petitioners. The learned single Judge



has passed the aforementioned order holding that the appointments of the petitioners have been found to be forged and fabricated.

2. The case of appellant Naresh Kumar Sinha (L.P.A. No.379 of 2018) is that the appellant was appointed as a Clerk in pursuance of an advertisement dated 22.06.1981, which had been issued by the then Education Officer, Vaishali for appointment of Clerks in different Nationalized High Schools. Consequent to his appointment by the order of the Additional Director in File No.11/Astha-1-010/89, the petitioner was issued an appointment letter on 24.06.1989 (Annexure 3) under the signature of the Deputy Director (Secondary Education), Bihar. As such, the appellant joined the said post on temporary basis in the S.M.T. High School, Vaishali on 04.07.1989, though his joining was resisted by the then Headmaster.

3. The further case of the appellant-petitioner was that though he submitted his joining on 04.07.1989 before the Headmaster, S.M.T. High School, Vaishali, his joining was not accepted by the Headmaster but he continued to perform his duty regularly without any break and was transferred to other places and lastly, he was transferred and posted in Devipad Choudhary Saheed Asmarak (Millar) School. However, all of a sudden, on 14.06.2004 (Annexure 16), D.E.O., Patna (respondent No.4)



asked the Headmaster of the said School to produce the service book, appointment letter and other certificates of the petitioner for verification and thereafter a show cause notice dated 19.09.2005 was issued alleging that the appointment letter of the petitioner-appellant was forged and fabricated. The petitioner then submitted his show cause and replied to the said show cause notice on 27.09.2005 but to his shock and surprise, received Memo No.2678 dated 21.11.2005, by which he was dismissed from service and a direction was issued to the Headmaster to lodge an F.I.R. against the appellant-petitioner. The said order of dismissal was placed under challenge in CWJC No.15852 of 2006.

4. The writ petitioner of C.W.J.C. No.10461 of 2007 has not preferred any intra-Court appeal.

5. Learned counsel for the appellant submitted that the learned single Judge has dismissed the writ application without appreciating the case of the appellant in its proper perspective and altogether ignored the pleading advanced by the appellant-writ petitioner. It was submitted that the dismissal of the writ petitioner from service on the premise that the appointment letter of the petitioner was fake and forged simply because it was issued under the signature of the Deputy Director of Human Resources Development Department is erroneous because the same letter was



issued on the direction of the Additional Director of the Human Resources Development Department, who was competent and authorised to order appointment of the petitioner-appellant.

6. Learned counsel further strenuously urged before this Court that the learned single Judge has failed to appreciate that the appellant-petitioner had rendered more than 15 years of uninterrupted and unblemished service and therefore he had a vested right to continue in service by the rule of estoppel. It was further submitted that his service could not have been terminated without following the principles of natural justice and without holding of a full-fledged enquiry as also by proving a fair opportunity of hearing to the persons against whom such an order was to be passed.

7. Learned counsel for the appellant-petitioner further submitted that under the instructions from the Additional Director, Human Resources Development Department, who was competent and authorised to order appointment, requested the District Education Officer, Vaishali to accept his joining but when the Headmaster had been opposing his joining, the D.E.O. vide his letter dated 03.08.1989, directed the Headmaster to accept his joining with effect from 04.07.1989 and report compliance thereof. Learned counsel further submitted that the District Education



Officer, Vaishali had also accepted certifying appointment of the petitioner and if the same would have been forged and fabricated, the D.E.O., Vaishali would not have written for payment of the salary of the petitioner. It was thus submitted that the entire allegation against the petitioner that his appointment letter was forged and fabricated and that the Additional Director is not competent to authorize such an appointment is misconceived and any order passed against the petitioner as also his dismissal order has no legs to stand and the same is fit to be set aside.

8. While the writ petition was being heard, in pursuance of the directions issued by this Court, a comprehensive counter affidavit was filed. The case of the State as contained in the counter affidavit is that the order of termination passed by the District Education Officer, vide Memo No.2678 dated 21.11.2005, is wholly legal and valid in view of the fact that the matter of validity of appointment of Clerk working in nationalized Secondary School of Patna district who were transferred by the then District Education Officer, Patna was examined on the basis of the report submitted vide District Education Officer, Patna Letter No.1126 dated 31.05.2005. On receipt of the aforesaid report, the matter of appointment was duly scrutinized in the Department. During the verification of such appointment, it



revealed that the total number of 36 Clerks were transferred by the District Education Officer, Patna on 31.12.2003 and out of which twelve Clerks were appointed before 01.10.1980 i.e. before the take over of the School, two Clerks were appointed on the recommendation of Bihar Public Service Commission and eleven were appointed on compassionate ground. It is further stated in the counter affidavit that the matter of the rest eleven Clerks, including the petitioner, was examined and the process was initiated for the verification of their appointment. The matter of the petitioner was examined in the Department and it was found that the petitioner and one Sri Sanjay Kumar Sinha were said to be appointed by the then Deputy Director (Secondary Education). During the course of verification, it revealed that the appointment letter produced by the petitioner and Sri Sanjay Kumar Sinha shown issued vide letter No.11/Esth.1-010/89-365 dated 21.06.1989 and Letter No.11/Esth-1-010/89-367 dated 21.05.1989. Thereafter, the concerned Section Officer of Section-11, Human Resources Development Department, vide letter No.928 dated 27.08.2005, was requested to verify the appointment letters of both the Clerks. The concerned Section Officer informed that both the appointment letters were not issued from their Section. It is further stated in the counter affidavit that on perusal of the information and the concerned page



of the despatch letter, it revealed that vide letter No.365 dated 26.06.1989 (Annexure B) issued from File No11/Aa-9020/86 and the letters were sent to the District Education Officer, Purnia, Regional Deputy Director of Education, Saharsa and the Chairman, D.I.F.I. Kishanganj. This letter was sent by registered post in sealed cover, vide letter No.367 dated 27.06.1989 (Annexure C), issued from File No.11/Bi-1-09, and the letters were sent to the Regional Deputy Director of Education, Hazaribagh and the Principal Primary Teachers Training College, Hazaribagh. This letter was sent by Special Messenger. It is further stated that when it was proved that the appointment letter produced by the petitioner was not issued from the Department and so-called appointment letter is forged, the services of the petitioner was terminated by the District Education Officer, Patna, vide Memo No.2678 dated 21.11.2005.

9. Against the order of termination of service, the petitioner moved the Secretary of the Department by filing an appeal petition. On receipt of the Appeal of the petitioner, the same was considered by the Commissioner-cum-Secretary of the Department and after due consideration, he was pleased to remand the matter before the Director(Secondary Education). On the aforesaid direction, the matter of the petitioner was duly heard by



the Director(Secondary Education) and after hearing the parties, a detailed order was passed and communicated vide Memo no.3235, dated 13.10.2006. During the course of hearing, when it revealed that the so-called appointment letter was not issued from the Directorate and when no proof was produced by the petitioner that he was duly appointed in accordance with the provision of rules and circulars, the claim of the petitioner for reinstatement in the service was rejected.

10. It is further needful to mention here that this Court while hearing the writ application directed a further enquiry and after due search of the concerned file bearing File No.11/stha 1-010/89, though the original file was not made available, but the part file was traced and on the basis of such file, it came to light that the file has been maintained for the purposes of transfer of employees of Secondary Schools. The aforementioned file was opened and maintained only for the purpose of newly appointed Clerks in the +2 Secondary Schools and it was not for the purposes of appointment to the post of Clerks in the Nationalised Secondary Schools. The extract of the report marked Annexure E in the counter affidavit filed before the Court in C.W.J.C. No.15852 of 2006 in pursuance of the order dated 27.07.2011 is extracted hereunder :



“Report in respect of the genuineness and correctness of the order of the appointment of the petitioner as contained in the office order no. 365, dated 24.06.89 said to be issued vide file No. 11/stha 1-010/89:-

The Hon’ble High Court while hearing CWJC No.15852/2006 Naresh Kumar Sinha v/s State on 27.07.11 was pleased to direct the undersigned to submit a report before the Hon’ble High Court with regard to genuineness and correctness of the order of the appointment of the petitioner as contained in the office order no.365, dated 24.06.89 said to be issued vide file no. 11/stha 1-010/89.

2. That, the petitioner Sri Naresh Kumar Sinha has filed the present writ petition against the order of termination of his services vide District Education Officer, Patna memo no.2678, dated 21.11.2005. The services of writ petitioner was terminated on the ground of the appointment letter produced by him was not issued from the department and the so-called appointment letter; by which he was shown appointed as clerk S.M.T. High School, Vaisali was found forged.

3. That, while examining the order of the appointment of the petitioner it revealed that the appointment letter produced by the petitioner is not found issued from the general dispatch register of the Directorate of Human Resources Authorities, but the appointment letter in question has been issued by the appointing violation of requisite procedure of the appointment with a view to give benefit to the petitioner. The appointment in Nationalised Secondary Schools are to be made following



the provisions of Personal and Administrative Reform Department's circular no.16440, dated 03.12.80. But the so-called appointment letter shows that this was issued in contrary to the provisions of the aforesaid circular; which can not be said genuine.

4. That, as per the direction of the Hon'ble High Court the Directorate of the Secondary Education was directed to trace and produce the concerned file bearing No. 11/stha 1-010/89. The Directorate Secondary Education informed that the Original file is not available, but a part file of the original file bearing no. 11/stha 1-010/89(part) was traced and produced before the undersigned. On going through the aforesaid part file, it revealed that this file was opened in respect of the transfer of the newly appointed clerks in the +2 Secondary Schools. On perusal of the notings and documents preserved in the correspondence side of the aforesaid part file, it appears that the file has been maintained for the purposes of the transfer of the employees of the +2 Secondary Schools. Aforesaid facts shows that the file in question vide No. 11/stha 1-010/89 was opened and maintained only for the purposes of the transfer of newly appointed clerks in the +2 Secondary Schools and this was not maintained for the purposes of appointment to the post of clerks in the Nationalised Secondary Schools.

From the facts and circumstances stated above it is clear that the petitioner's appointment on the basis of the appointment letter produced by him is not genuine and correct as the same was not found issued from the dispatch register of the Directorate and the concerned file bearing no.11/stha 1-010/89 was



also not concerned with the appointment of the petitioner.”

11. The learned single Judge after full consideration of the report submitted by the Principal Secretary, Human Resources Development Department, Bihar, Patna, vide his letter dated 19th December, 2011, conclusively came to the decision that the very appointment of the petitioner was made by an authority, who was not duly authorized to issue such appointments and, further, the appointment letter was in itself not in part file as it was referred to in the concerned record as the same relates to only all transfers and postings of newly appointed Clerks. The concerned Principal Secretary has moreover categorically noticed from the report that the concerned Principal Secretary has specifically averred that the appointment in the Nationalized Secondary Schools are to be made by following the procedure of Personnel and Administrative Reforms Department Circular No.1640 dated 03.12.1980, whereas the so-called appointment letter in favour of the petitioner was issued contrary to the aforementioned circular and thus is not a genuine and valid document.



12. We have heard learned counsel for the appellant and also learned counsel for the State of Bihar and perused the materials on record.

13. Learned counsel for the appellant has strenuously urged that it was wrong on the part of the respondents to consider the appointment of the appellant to be illegal. It was submitted that the appointment of the appellant had been made by the authority and in exercise of such authority, the Additional Director, vide his Memo No.365 dated 21.06.1989, got the petitioner appointed under the signature of the Deputy Director, Secondary Education. It was submitted that the appointment of the petitioner had not been obtained either by means of fraud or any misrepresentation and, therefore, the action of the authorities in terminating his services was wholly erroneous and ought to be recalled. It was further submitted that the appellant after having worked for a considerable number of years, it was not open to the authorities to open an issue regarding the appointment of the petitioner and without any notice to him terminating his services after putting the validity of his initial appointment under a cloud.

14. It may be noted further that right from the outset, we have observed that the Headmaster was having serious reservation regarding joining of the petitioner, but the District



Education Officer, Vaishali on receiving a communication dated 27.07.1989 (Annexure 4) from the Deputy Director, Secondary Education, by which the said authority had confirmed the said appointment of the petitioner, directed the Headmaster to accept the joining of the petitioner with effect from 04.07.1989. Furthermore, he had also issued further directions for payment of salary to the appellant.

15. It has been further observed by us from the record of the case that the concerned Headmaster had again responded to the directions of the D.E.O. in a negative manner inasmuch as he had not agreed to pay the appellant his salary and on the contrary, on receipt of Memo No.5491-92 dated 15.11.1989 had, in fact, relieved the appellant-petitioner. Thus, it was evident that the Headmaster had clearly not accepted the appointment of the petitioner. It is further relevant to note here that once the appellant was relieved by the Headmaster from S.M.T. High School, Vaishali, he joined the office of the D.E.O., Vaishali on 16.11.1989, who himself relieved the petitioner to submit his joining in the office of the Additional Director for “adjustment”. What is indeed strange is that it is not known as to under what authority the Additional Director had proceeded to make such an appointment even though a Committee had been constituted, vide



Annexure 2, to consider the appointment of the teaching and non-teaching staff, which consisted of the District Education Officer, Vaishali, District Education Inspectress, Vaishali and one Nagina Singh, Headmaster, Government High School, Vaishali. Thus, the appointment of the petitioner under the instructions from the Additional Director appears to be collusive and in violation of the procedure which was stated in Memo No.3826 (Hajipur) dated 10th July, 1984.

16. Learned counsel for the appellant has also drawn our attention to a decision of this Court in the case of **Ashok Kumar and others Vs. The State of Bihar & Others**, reported in **1994(2) BLJ 499**, wherein learned counsel for the appellants, while referring to paragraphs 9, 12 to 15 of the said judgment, have tried to persuade this Court in their favour. It is important to indicate that the question of validity of appointment was under consideration in the same case and the Court held that the validity of the appointment made 12 years back cannot be opened. We do not find ourselves in agreement with a reliance on such a judgment as the facts of the said case was adequately different, whereas in the present case, the appointment of the appellant was in pursuance of the wrong perpetuated at the hands of an official who was neither authorised by any order of the Government nor



was he entitled to issue order of confirmation. That apart, the respondents, in the instant case, have now clearly come up with a stand that the entire file referred to in the appointment letter of the appellant is, in fact, in a file which was created for the transfer and appointment of newly appointed Clerks and, therefore, by no stretch of imagination, could the same file be considered to have been for the purposes of issuance of the appointment letter of the appellant. Thus, this Court is wholly in agreement with the finding arrived at by the learned single Judge that the appointment of the appellant-writ petitioner was not in conformity with the provision of the Personnel and Administrative Reforms Department contained in Circular No.16440 dated 03.12.1980, which clearly enunciated that the appointments were to be made at the level of the Directorate.

17. Delving further into the matter, we also find ourselves in agreement with the learned single Judge that the contention of the respondents that the appointment letter was not issued by the Directorate of Human Resources has not been controverted, but has been issued from the Office of the Deputy Director, Secondary Education. Furthermore, we have observed that the file in question from which the appointment of the appellant is said to have emanated is, in fact, a part file, which



was opened and maintained only for the purposes of transfer of Clerks in +2 Secondary Schools and this was not maintained for the purpose of appointment to the post of Clerk in the Nationalized Secondary Schools. Thus, on this score also, this Court is of the considered opinion that the continuance of the appellant-petitioner could not be sustained and the order of termination was wholly legal and valid.

18. A perusal of Annexure A to the counter affidavit also reveals that the appointment letters of the present appellant was verified along with all other 11 Clerks and it was found that during the course of verification, the appointment letter produced by the petitioner was shown to be issued vide Letter No.11/Esth.1-010/89-365 dated 21.06.1989 and it came to light that the appointment letters of the present appellant as well as one Sanjay Kumar Sinha was not issued from their Section, namely, Section 11 of the Human Resources Development Department. Furthermore, it reveals that vide Letter No.365 dated 21.06.1989 issued from File No.11/Aa-9020/86, the letters were sent to the District Education Officer, Purnia, the Regional Deputy Director of Education, Saharsa and other places, but the appointment letter produced by the petitioner was not issued from the Department.



19. Having noticed the above and upon consideration of the entire facts of the case, we are of the considered opinion that the learned single Judge has rightly upheld the order of termination of the appellant and even in this appeal, there being no cogent explanation controverting the situation which has emerged on enquiry, we uphold the judgment and order passed by the learned single Judge.

20. The appeal stands dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

