

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.309 of 2018

In

Civil Writ Jurisdiction Case No.11842 of 2008

-
-
1. Byasdeo
 2. Adityadeo
Both sons of Late Ram Lakhan Prasad, Both r/o Village Chakmaskhan, P.O. Surajgaraha, P.S. Surajagraha, District- Lakhisarai
 3. Parwati Devi D/o Late Ram Lakhan Prasad W/o Mahdeo Prasad, r/o village- Mustafapur, P.O. Mustafapur, P.S. Surajgarha, Distt. Lakhisarai
 4. Satyawati Devi D/o Late Ram Lakhan Prasad W/o Ashok Tanti, r/o village- Himachaldih, PO- Dhira, PS.- Halsai District- Lakhisarai
 5. Kumari Mamta D/o Late Ram Lakhan Prasad W/o Vikash Kumar, r/o village- Godih, P.O.- Kuel, PS.- Chanan, District- Lakhisarai
 6. Satyarupa Kumari D/o Late Ram Lakhan Prasad r/o village Chakmaskan, P.O. Surajgarha, PS.- Surajgarha, Distt. Lakhisarai Pin 811106
 7. Kumari Mannu Bharti d/o Late Ram Lakhan Prasad Both resident of village- Chakmaskan, P.O. and P.S.- Surajgarh, District- Lakhisarai,
Substituted in the court below as legal heirs and representatives in place of original petitioner Late Ram Lakhan Prasad.....

... .. Appellants

Versus

1. The State Of Bihar
2. Director Primary Education, Government of Bihar, Patna
3. District Magistrate-cum-Collector, Lakhisarai
4. District Superintendent of Education cum Sub-Division Education Officer, Lakhisarai
5. District Education Officer, Lakhisarai
6. District Treasury Officer, Lakhisarai

... .. Respondent/s

with

Letters Patent Appeal No. 310 of 2018

In

Civil Writ Jurisdiction Case No.9323 of 2010

-
-
1. Byasdeo
 2. Adityadeo
Both sons of Late Ram Lakhan Prasad Both residents of village - Chakmaskhan, P.O. Surajgarha, P.S. Surajgarha, District Lakhisarai.



3. Parvati Devi D/o Late Ram Lakhan Prasad, W/o Mahadeo Prasad resident of village - Mustafapur, P.O. Mustafapur, P.S. Surajgarha, District Lakhisarai.
4. Satyawati Devi D/o Late Ram Lakhan Prasad, W/o Ashok Tanti resident of Himchal Dih, P.O. Dhira, P.S. Halasi, District - Lakhisarai.
5. Kumari Mamta D/o Late Ram Lakhan Prasad, W/o Sri Vikas Kumar resident of Godih, P.O. Kuel, P.S. Chanan, District Lakhisarai.
6. Satyarupa Kumari D/o Late Ram Lakhan Prasad resident of village - Chakmaskan, P.O. Surajgarha, P.S. Surajgarha, District Lakhisarai, Pin - 811106.
7. Kumari Mannu Bharti D/o Late Ram Lakhan Prasad resident of village - Chakmaskan, P.O. Surajgarha, P.S. Surajgarha, District Lakhisarai.....
...Substituted in the court below as legal heirs and representatives in place of original petitioner late Ra Lakhan Prasad.....

... .. Appellants

Versus

1. The State Of Bihar
2. Director, Primary Education, Government of Bihar, Patna.
3. District Magistrate-cum-Collector, Lakhisarai.
4. District Superintendent of Education-cum-Sub Division Education Officer, Lakhisarai.
5. District Education Officer, Lakhisarai.
6. District Treasury Officer, Lakhisarai.

... .. Respondents

=====

Appearance :

For the Appellant/s : Mr.Ashok Kumar, Advocate
Mr. Kumar Mlendu, Advocate
For the Respondent/s : Mr.Ashutosh Ranjan Pandey, AAG-15

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 02-05-2019

Challenge in these two Letters Patent Appeals is the common judgment dated 01.02.2018 passed by the Hon'ble Single Judge in the writ applications originally preferred by the father of



the appellants. It appears that during pendency of the writ applications the original writ petitioner died and in his place his legal heirs (appellants) were substituted.

In C.W.J.C. No. 11842 of 2008, the prayer was to quash the office order dated 30.12.2005 bearing *Gapank* No. 2536 issued by the District Superintendent of Education-cm-Sub-Divisional Education Officer, Lakhisarai (respondent no. 4) by which the representation of the petitioner in the light of order dated 29.11.2005 passed by the Hon'ble Division Bench of this Court in L.P.A. No. 1281 of 2005 with regard to claim of the petitioner towards salary for the work claimed to have been done by the petitioner, came to be rejected. The petitioner(s) prayed for a writ of Mandamus directing the respondents to pay the salary of the petitioner for the work which he had actually done from February, 1999 till the date of his termination i.e. 20.07.2005 with all consequential benefits.

C.W.J.C. No. 9323 of 2010 was preferred for setting aside the order dated 10.10.2008 passed by the Divisional Commissioner, Munger in Service Appeal No. 07 of 2006 (Ram Lakhan Prasad Vs. State of Bihar & Ors.) by which the Divisional Commissioner, Munger disposed of the Service Appeal preferred by the petitioner affirming the office order bearing



Gyapank No. 1477 dated 21.07.2005. The Divisional Commissioner held that the petitioner got his appointment on the basis of a forged certificate and as this fact came to the knowledge of the respondents, the respondents dismissed the petitioner from his service. The dismissal of the petitioner from service has been held legal and valid by the Commissioner.

In the second writ application, the petitioner also challenged the letter bearing no. 1328 dated 06.03.2010 (Annexure 11) issued by the office of the respondent no. 4 refusing to pay the salary of the petitioner. The petitioner prayed for a direction to the respondents to pay the salary claimed by him since the year 1999 and the other retirement benefits.

In fact, on going through the reliefs prayed in the second writ application it may be found that the prayer made in the first writ application virtually got merged in the prayers of the petitioner in the second writ application.

Brief facts

It was the case of the original writ petitioner that after passing his matriculation and teachers training examination, he applied for selection on the post of Assistant Teachers in the year 1967 before the District Education Committee, Munger. It is stated that after interview the petitioner had been declared



successful by the said committee and upon verification of the correctness of his certificates, an appointment letter vide memo no. 3556/III, Munger Dated 17.02.1973 had been issued from the office of the District Superintendent of Education, Munger under the seal and signature of the District Superintendent of Education.

The original writ petitioner thereafter, narrated as to how he was transferred from one place to another and after verification and inspection report with respect to the certificates of the petitioner, his pay fixation was done followed by the first time bond promotion on 28.02.1983. The petitioner had crossed the eligibility ban on the basis of the order passed by the Area Officer, Lakhisarai vide memo no. 14 dated 21.02.1994, his pay was fixed at Rs. 2000/- with effect from 22.08.1993.

The grievance of the petitioner was that all of a sudden his salary was stopped after January, 1999 on the basis of an order issued by the then District Superintendent of Education-cum-Sub-Divisional Officer, Lakhisarai vide memo no. 260 dated 26.04.1990. His name was placed in the list of the names of forged or seems to be a forged appointed teachers. The petitioner claimed that in the list as contained in Annexure 4/1 to the writ application, salary of one Ram Lakhan Prasad Singh who was posted at Middle School, Primary School, Patalpur was mentioned,



the petitioner submitted that his name was Ram Lakhan Prasad and he was posted as Assistant Teacher of Primary School, Sikandarpur, Suryagarha. Therefore, the petitioner claimed that he was being punished without there being any reasonable doubt against him.

It appears that the petitioner filed a writ application being C.W.J.C. No. 1622 of 2000 before this Court for a direction to the respondents to pay his arrears of salary and other allowances since February, 1999. The said writ application came to be disposed of on 22.07.2005 with an observation that the petitioner, if so advised may move before the appropriate authority in this regard who shall pass an appropriate order in accordance with law in view of the settled judgment of this Court and the Hon'ble Supreme Court.

A criminal case being Suryagarha P.S. Case No. 227 of 2005 under Sections 420, 467, 468, 471 of the Indian Penal Code was also filed in which the petitioner was made an accused. The allegation was that the petitioner had obtained appointment on the basis of forged educational certificate. At this stage vide *Gyapank* No. 1477 dated 21.07.2005, the service of the petitioner was terminated.



The order of termination was challenged by the petitioner vide C.W.J.C. No. 13019 of 2005 which was dismissed by the Hon'ble Single Judge with a liberty to the petitioner to avail the alternative remedy of appeal. The petitioner preferred an appeal before the Divisional Commissioner, Munger vide Appeal No. 869 of 2006 which was pending at the time of filing of the first writ application.

The petitioner at the same time preferred a Letters Patent Appeal being L.P.A.No. 281 of 2005 for setting aside the order dated 22.07.2005 passed in C.W.J.C. No. 1622 of 2000. The L.P.A. was, however, withdrawn with permission to file a representation to the competent authority. On filling of such representation, the authority concerned was directed to consider and pass order in accordance with law. In the light of this observation, the petitioner made representation on 10.12.2005 before respondent no. '4' requesting for payment of his salary for the period he had worked but no decision thereon was taken. The petitioner filed a contempt application being MJC No. 344 of 2006, after notice of the said contempt petition, the respondent allegedly came with the impugned office order dated 30.12.2005 which was received by the petitioner during the pendency of the contempt application on 08.03.2006.



The correctness of the order dated 30.12.2005 was challenged by filing a writ application.

A perusal of the impugned order dated 30.12.2005 as contained in Annexure '1' to the writ application would show that the claim of the petitioner for salary was rejected on the ground that the termination of the service of the petitioner was done vide letter no. 1477 dated 21.07.2005 when it was affirmed by the Deputy Secretary (Vigilance) Bihar School Examination Board (hereinafter referred to as "the Board") vide his letter no. 5919 dated 12.07.2005 that the training certificate of the original petitioner was forged, therefore, a stand was taken that following the judgment of the Hon'ble Supreme Court, if the appointment of the petitioner was based on a forged training certificate, he would not be entitled for salary or any other benefits attached to the service.

It further appears that the service appeal preferred by the also came to dismissed vide order dated 10.10.2008 passed by the Divisional Commissioner, Munger as contained in Annexure '1' to the second writ application. In the impugned order dated 10.10.2008 the Divisional Commissioner relied upon the verification report of the Board saying that the given role number, year and the name of the student as shown on the certificate



produced by the petitioner differs with the name of the student who had appeared from the given examination centre. He also took note of the fact that the District Superintendent of Education vide his letter no. 1439 dated 16.07.2005 called upon the original writ petitioner (appellant in the service appeal) to explain the same but the petitioner went on leave since 01.05.2005 for uncertain period and the said letter could not be served upon him. Since the Board had verified the training certificate and it was found that the training certificate produced by the petitioner was not matching with the original certificate lying in the office of the Board, the Divisional Commissioner, Mugner being the appellate authority dismissed the appeal.

In course of hearing of the writ application before the learned Single Judge, a plea was taken on behalf of the petitioner that the dismissal of the original petitioner was done without holding any proper inquiry which is impermissible in law. It was submitted that the letter of the Board provided that the role number and the centre mentioned in the certificate was with regard to another person and the parents name also differs but according to learned counsel for the petitioner, it was not enough to hold that the training certificate of the original petitioner was forged and fabricated. One of the submissions of the learned



counsel for the original petitioner was that the authorities of the Board were required to disclose as to in whose name the training certificate was existing. The submission was also that the original writ petitioner had served for a long time and authenticity of his educational certificate could not have been challenged after more than 30 years.

The learned single Judge, however, did not accept the submissions of the learned counsel representing the original petitioner/substituted petitioners. The Writ Court was convinced that the authorities below had given full opportunity of hearing to the original writ petitioner but in course of the proceeding before the appellate authority the petitioner had not uttered even a single word with regard his certificate being genuine. It is in these circumstances, the Divisional Commissioner noted that once the petitioner himself has not pleaded the genuineness of the certificate, no relief may be granted to him.

Submissions

In the Letters Patent Appeal before us, once again learned counsel for the substituted petitioners who are the appellants has contended that after putting a long 30 years of service, the father of these appellants could not have been terminated from service without holding a departmental inquiry.



Learned counsel submits that the Divisional Commissioner, Munger as well as the learned Writ Court could not appreciate that the allegations that the training certificate of the father of the appellants was forged was required to be proved beyond all reasonable doubts. It is submitted that termination of the service of the original writ petitioner without holding a departmental inquiry was not just and proper and it cannot be said to be inconsonance with the principles of natural justice.

We have heard learned counsel for the appellants and carefully went through the impugned orders passed by the Divisional Commissioner, Munger as well as the impugned judgment passed by the learned Single Judge, we find from the records that the Divisional Commissioner, Munger has categorically stated in his order dated 10.10.2008 that the original writ petitioner who was appellant before the Divisional Commissioner had not even whispered in his representations that his training certificate is not forged. The appellant before him had only narrated his service history and claimed that he had been in service for 30 years, therefore, a sympathetic view should be taken. The Divisional Commissioner, Munger has also noted in his order that after receipt of the verification report from the Board, a letter bearing no. 1439 dated 16.01.2005 was issued to the



appellant from the office of the District Superintendent of Education calling upon him to submit an explanation but the letter was never served because the appellant-original writ petitioner had gone on an indefinite leave on the ground of illness.

Consideration

We have gone through the pleadings available in the writ application in C.W.J.C. No. 9323 of 2010 in which the order of the Divisional Commissioner has been assailed. In the writ application he has not made any statement that what has been recorded by the Divisional Commissioner, Munger with regard to his absence of claim that his training certificate is not forged, is not correct. In other words the findings recorded by the Divisional Commissioner, Munger in the impugned order dated 10.10.2008 has not been contested by the original writ petitioner. One of the contentions of the petitioner is that similarly situated person namely, Kabir Mahto whose name also appeared in Annexure '3' series had been allowed his entire salary and retirement benefits including pension payment on the order of this Court dated 01.05.2009 in L.P.A. No. 132 of 2009.

On going through the judgment dated 01.05.2009 passed in L.P.A. No. 232 of 2009, we find that in the said case the writ petitioner was deprived of his salary, he moved this Court by filing



C.W.J.C. No. 1228 of 2003 and this Court directed the respondents (appellants) to pay salary and decide the other claims of the petitioner. The said judgment became final. Subsequently the petitioner in the said case retired from service on 30.06.2004. Neither any criminal case nor any departmental proceeding was pending against him. Therefore, after retirement when he came in a contempt application before the High Court and in course of hearing of contempt application when a plea was taken on behalf of the respondents that the petitioner has obtained his appointment on the basis of forged certificate, the same was challenged and then the order of termination of his service was set aside. In these circumstances the letters patent appeal preferred by the District Superintendent of Education, Lakhisarai was dismissed by the Hon'ble Divisional bench of this Court. We find that the case of the father of these appellants are quite different and distinct from the case of said Kabir Mahto. In this case there was no order of learned Writ Court to make payment of salary to the original writ petitioner. The facts are substantially different.

We further find that in course of hearing of the writ application a counter affidavit was filed on behalf of the respondent Board. The Board made a categorical statement in their counter affidavit in paragraph '7' that the certificate and



marks sheet which were sent for verification were meticulously verified with the records of the Board pertaining to the said teachers training examination of the petitioner and in course of verification it came to light that the said certificate /result was not in the name of the original writ petitioner rather it was in the name and parentage of some other student/candidate. Annexure 'A' to the said counter affidavit has been brought on record to show that the communication was made by the Board vide letter no. 5919 dated 12.07.2005 to the office of the District Superintendent of Education, Lakhisarai in this regard.

It is also evident from the records that the counter affidavit of the Board was not contested by and on behalf of the petitioners-appellants. No rejoinder to the counter affidavit was filed and no question was raised with respect to the findings of the Board as contained in Annexure 'A' to the their counter affidavit. In these circumstances we find that not only the writ application was filed without there being adequate pleadings to contest the findings of the Divisional Commissioner, Munger, even subsequently during pendency of the writ at no point of time the verification report of the Board was contested.



This being the position, we find no error in the order passed by the learned Writ Court. The Letters Patent Appeal having no merit is dismissed.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	
CAV DATE	01.05.2019
Uploading Date	02.05.2019
Transmission Date	

