

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8676 of 2016

Minu Jamuar wife of Deepak Sahay Jamuar, Resident of H/o Mrs. Bimla Baria, Near DVC Gate, Jakkanpur, Patna- 1, P.S.- Jakkanpur, District- Patna

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Ltd. through its Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman cum Managing Director, the Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bhawan, Bailey Road, Patna.
3. The General Manager, HR and Admin, the Bihar State Power Holding Company Ltd., cum-Chairman of the Local Managing Committee of the DAV Public School BSEB Colony, having office at Vidyut Bhawan, Bailey Road, Patna.
4. The DAV College Managing Committee (DAV CMC) through its General Secretary, Chitra Gupta Road, New Delhi- 110055.
5. The General Secretary, DAV College Managing Committee, Chitra Gupta Road, New Delhi- 110055
6. The Assistant Regional Director, (Patna Zone), DAV Public School, Arya Samaj Mandir Complex, New Bailey Road, Patna 801503.
7. The Principal DAV Public School, Bihar State Electricity Board Colony, New Punaichak, Patna 800023.
8. Secretary, Central Board of Secondary Education, Patna Region, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar, Sr. Adv.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Adv.
For the Resp Nos. 6&7	:	Mr. Anil Kumar Sinha, Adv.
		Mr. Surendra Kumar, Adv.
For the BSPHC Ltd.	:	Mr. Ranjit Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

10 29-07-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Petitioner has filed writ application for a direction to
the respondents to accept the joining of the petitioner and allow
the petitioner to work as Teacher in the DAV High School.



Mr. Anjani Kumar, learned senior counsel appearing on behalf of petitioner submits that petitioner was initially appointed on Temporary Basis vide letter No. 4892 on 13.01.2011. Petitioner service was extended till 31.03.2012. She was appointed after written examination followed by an Interview. Considering her satisfactory service, she was allowed to continue in the school upto 31.03.2015. Mr. Anjani Kumar, further submitted that the petitioner has passed Bachelor of Education (B.Ed.) Examination and also passed Central Teacher Eligibility Test (CTET) in April, 2015 and thus, she become eligible for appointment on regular basis.

Mr. Anjani Kumar, learned senior counsel on behalf of petitioner submits that petitioner was asked to appear in the interview on 02.06.2015 and during the interview petitioner was asked her caste and thereafter, the respondents have decided not retain the service of the petitioner. He submits that entire action of the respondents is tainted with malafide.

In the whole pleading, the petitioner has pleaded that only because of the caste bias, petitioner has not been allowed to continue in this school. It is also submitted that respondents have acted with malafide and the benefit which was available to her daughter as ward was also later on withdrawn by the



respondents which further indicate the arbitrariness and bias and manifests that the respondent no.6 acted with ulterior motive and bias.

Mr. Anjani Kumar submitted with the pleading of the parties that specific averments have been made by the petitioner as to arbitrary, malafide action of the respondents in the writ application but the respondents have chosen not to controvert the aforesaid allegation and averment. The allegations are in the nature of malafide of fact and the Apex Court has the occasioned to decide the issue how malafide is to pleaded and established in the case of Shivaji Patil Nilengekar Vs. Madho Gosai (1987) 1 SC 227, the Apex Court in the case of Shivaji Patil Nilengekar case said down the principle to be followed in pleading malafide on fact, the Court does not find that the pleading are appropriate to establish malafide of the fact. On the basis of material available on record, the Court arrives at a conclusion that there is absolutely no material to conclude that the petitioner was terminated with stigma. The documents on record as well as the statement made in the counter affidavit as well as the reply to legal notice would indicate that respondents have not removed or not allowed to the petitioner to join this school by casting any stigma or aspersion on the competence



and otherwise of the petitioner.

Mr. Anjani Kumar with reference to judgment in Civil Appeal No. 9166 of 2013 submitted that the writ application is maintainable and relying on para 23 of the Civil Appeal, he submitted that petitioner is entitled to reinstatement and back wages para 23 of the judgment in Civil Appeal No. 9166 of 2013 is quoted herein below:

“23. In the present case, the employee has served for five years before dismissal from the service by a stigmatic order, passed without holding an enquiry, we cannot entertain the submission raised by learned Senior counsel for the Appellant-School that back wages should be denied. The manner in which termination had been made was clearly arbitrary and the order was illegal and void and thus back wages should follow.”

The materials available on record is not indicate that the petitioner was removed or dismissed from service by stigmating order or casting aspersion. To the contrary materials available on record would indicate that the petitioner was appointed as a Teacher for a fixed term and thereafter, petitioner was allowed to continue in the school upto 15.06.2015 and she was paid remuneration for the work she has done.

In the peculiar facts and circumstances, the Court is of



the view that there is no order of casting any aspersion on the petitioner. The submission that the specific pleading as to malafide and bias has not been answered is of no help to the petitioner as principle of non traverse is not applied in a case of malafide without necessary material in terms of the judgment of the Apex Court in Shivaji Patil Nilengeker's case.

In view of the above, the Court does not find any merit in this case, the writ petition is dismissed.

(Anil Kumar Upadhyay, J)

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