

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13024 of 2019

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Munni Devi D/o Sri Puso Ram, W/o Sri Ashok Kumar Ram Resident of
Village Vikrampur, PO Sarangpur, P.S. Tajpur, Dist. Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Education Department, Govt. of Bihar, Patna
4. The District Magistrate, Samastipur, Dist. Samastipur
5. The District Education Officer, Samastipur, Dist. Samastipur
6. The District Programme Officer (Establishment), Samastipur, Dist. Samastipur
7. The Block Education Officer, Sarairanjan, Dist. Samastipur
8. The Panchayat Secretary, Gram Panchayat Raj, Akhtiyarpur Balbhadra, Block-Sarairanjan, Dist. Samastipur
9. The Mukhiya of the Gram Panchayat Raj, Akhtiyarpur, Balbhadra, Block Sarairanjan, Dist. Samastipur
10. The Headmaster, Primary School, Bhojpur, Ward No. 12, Akhtiyarpur Balbhadra, Block Sarairanjan, Dist. Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar, Advocate Mr. Mukesh Kumar Singh, Advocate Mr. Arinjay Kumar, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Singh, A.C. to S.C. 16

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-03-2021

Heard Mr. Mrityunjay Kumar, learned counsel for the petitioner and Mr. Pramod Kumar Singh, learned A.C. to S.C. 16 appearing for the Respondents-State.

2. The present writ application has been filed for quashing of letter No. 389 dated 26.10.2018 (Annexure-4) issued



by the Block Education Officer, Sarairanjan, Distt. Samastipur, whereby a direction has been issued to the *Mukhiya* and Panchayat Secretary of the Gram Panchayat, Akhtiyarpur, Balbhadra to cancel the appointment of the petitioner as Panchayat Teacher in Primary School, Bhojpur, Ward No.12 on the ground that the petitioner has been appointed on the basis of certificate issued from non recognized institution.

3. The brief facts giving rise to the present writ application is that the petitioner was appointed on 5.11.2007 as Panchayat Teacher in Primary School, Bhojpur, Ward No. 12, Gram Panchayat Akhtiyapur Balbhadra, Block Sarairanjan, Distt. Samastipur and at the time of appointment the petitioner had produced the *Madhyama Visharad* certificate issued by *Hindi Sahitya Sammelan, Prayag, Allahabad*, equivalent to Intermediate. After appointment of the petitioner in 2007, the certificate issued by the *Hindi Sahitya Sammelan, Prayag, Allahabad*, has been declared invalid pursuant to Govt. Circular with effect from 25th August, 2008 and a clarification in this regard was issued by the Director, Primary Education, Government of Bihar, Patna, vide his letter No. 131 dated 11.02.2012 stating therein that the certificate of *Madhyama Visharad* obtained from *Hindi Sahitya Sammelan, Parayag, Allahabad*, has been declared invalid and the teacher who



has been appointed in the year 2006 on the basis of the said certificate shall remain continued on their respective posts. The petitioner has further stated that after appointment, the petitioner continued on the post and succeeded in the teacher evaluation (*Dakshta Pariksha*) conducted by the SCERT in the year 2013 and also passed the two years in service teacher training course i.e. D.el.ed exam conducted through the Bihar School Examination Board as well as the State Council for Education Research and Training, Patna.

4. A counter affidavit has been filed on behalf of the Respondent Nos. 6 and 8 stating therein that the petitioner has been removed from service in pursuance of direction of Block Education Officer, Sarairanjan, Distt. Samastipur, vide letter No. 389 dated 26.10.2018 and accordingly letter No.34 dated 9.11.2018 was issued by the Panchayat Secretary by which the petitioner has been removed from service. It has further been contended in the counter affidavit that there is alternative remedy of appeal before the District Teacher Employment Authority and the petitioner may be relegated to the remedy of appeal. The letter of removal dated 9.11.2018 has been challenged by the petitioner by way of filing Interlocutory Application bearing I.A. No. 1/2021 stating therein that before issuance of the letter of removal,



annexed at Annexure-9 to the Interlocutory Application, the petitioner was not served with any show cause notice and the order of removal has been passed in complete violation of principle of natural justice as well as Circular of the State Govt. dated 25.8.2008.

5. Learned counsel for the petitioner in support of the writ application submits that the impugned letters at Annexure-4 and 9 have been issued without application of mind inasmuch as from perusal of Annexure-2 and the Circular dated 25.08.2008 issued by the Government of Bihar, vide Memo No. 3152. From perusal of Circular dated 25.8.2008, it would be evident that *Madhyama* certificate issued by *Hindi Sahitya Sammelan*, Prayag, Allahabad, along with other institutions mentioned in the Circular shall not be considered for the purpose of appointment of teachers in Primary Schools. The Circular further clarifies that the appointment made on the posts of teacher prior to this Circular shall be guided by the Circular issued by the Personnel and Administrative Reforms department. Learned counsel thus, submits that from the Circular, it is very much clear that it was made effective from 25.08.2008 and the petitioner has admittedly been appointed prior to coming into force of the Circular i.e in the year 2007.



6. Learned counsel further submits that before issuance of the order of removal, no notice or show cause was served upon the petitioner at any point of time and the impugned letter is bad in law on this very count itself. The petitioner has relied upon the order passed by a co-ordinate Bench of this Court in CWJC No.4455 of 2017 and CWJC No. 16939 of 2018 in order to show that in the similar matter the co-ordinate Bench of this Court has allowed the writ applications filed by the Primary Teachers on the similar facts. Learned counsel in support of his argument also relied upon a judgment of this Court in a case of **Suryadeo Singh Vrs. The State of Bihar & Ors.** reported in 2011(1) PLJR 28.

7. On the other hand, learned counsel for the Respondents-State submits that there is an alternative remedy of appeal. The petitioner may be relegated to the remedy of appeal before the Appellate Authority.

8. I have heard learned counsel for the parties and have gone through the writ petitions and other pleadings filed by the parties. From perusal of the Circular dated 25.8.2008 vide Memo No. 3152, it is evident that the certificate issued by the *Hindi Sahitya Sammelan* has been made invalid for the purpose of appointment on the post of Primary Teacher with effect from the



date of issuance of the Circular dated 25.08.2008 and, admittedly, the petitioner has been appointed prior to the date of issuance of Circular in the year 2007. It appears that the degree obtained from the *Hindi Sahitya Sammelan*, Prayag, Allahabad was valid for appointment in the year 2007 and a co-ordinate Bench of this Court in CWJC No.4455 of 2017 has taken the similar Circular into consideration and has allowed the writ application. I have also gone through the judgment relied upon by the petitioner reported in **2011 (1) PLJR 28**, paragraph-10 of the same is relevant and quoted hereinbelow:-

“10. In the light of the aforementioned submissions, the first question which needs to be examined is whether the writ petitions are maintainable in absence of the petitioners not exhausting the statutory remedy of appeal. It is not in doubt that both under the Sewa Sharta Niyamavali, 1983, there is a provision of appeal against the order of punishment, but then a question arises as to whether both the writ petitioners can be non-suited on the ground of not filing their appeal against the impugned orders of the removal of services before filing of the writ petitions. This question, however, as with regard to



*the maintainability of the writ application should not detain this Court, in view of the fact that it is an admitted position that as the orders of punishment came to be passed without compliance of the principle of natural justice. It is not disputed by the learned State Counsel that the Director, Secondary Education before passing the impugned orders had not issued any notice and/or given any opportunity of hearing. Therefore, once it is found that the impugned orders have been passed in complete breach of principles of natural justice, this Court cannot shut its doors only because the petitioners did not file their appeal. Way back, the Apex Court in the case of **State of U.P. vs. Md. Nooh** reported in AIR 1958 SC 86 had held that writ applications under Article 226 of the Constitution of India would be maintainable before the High Court even in those cases where the statutory remedy of appeal has not been invoked by the petitioners when the order passed and assailed is either in violation of the principle of natural justice or is wholly without jurisdiction. The aforesaid view of the Apex Court has been reiterated from time to time in series of judgments*



*as was noticed by the Apex Court itself in the case of **Whirlpool Corporation vs. Registrar of Trade Marks Mumbai and Others** reported in (1998)8 S.C.C. 1 wherein their Lordships had held as follows:-*

“.....Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged”



9. In view of the aforesaid discussions, I find that before issuance of the order of removal, the petitioner was not served with any show cause notice and the letter impugned is violative of principle of natural justice and accordingly the contention raised by the State counsel that the petitioner may be relegated to alternative remedy of appeal is not sustainable and accordingly the same is rejected. The impugned letters are also not sustainable on the fact that the petitioner was appointed prior to coming into force of the Circular dated 25.08.2008 by which the certificate issued by the *Hindi Sahitya Sammelan*, Prayag, Allahabad, was declared invalid.

10. As a result, this writ application is allowed. The order impugned vide letter No. 389 dated 26.10.2018 and letter No.31 dated 11.02.2012 are set aside and the petitioner is directed to be reinstated with all consequential benefits.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
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