

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.969 of 2019

In

Civil Writ Jurisdiction Case No.3824 of 2017

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Mojibul Haque Son of Late Lal Mohammad Resident of Kutub Chapra, P.O.-
Bakarganj, Gopalpur, P.S.-Hussainiganj, District-Siwan

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. The Principal Secretary Education Department, Government of Bihar, Patna
3. The Director Secondary Education Department, Government of Bihar, Budh
Marg, Patna
4. The District Education Officer Siwan, District-Siwan
5. The Staff Selection Commission through its Secretary, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Brisketu Sharan Pandey, Adv
For the Respondent/s : Mr.Ashutosh Ranjan Pandey (AAG15)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 03-03-2021

Heard learned counsel for the parties.

This LPA under Clause 10 of Letters Patent Appeal
has been preferred for setting aside the judgment and order



dated 09.07.2019 passed by learned Single Judge of this Hon'ble Court in CWJC No. 3824 of 2017, dismissing the writ petition.

Briefly stated, the facts of the case is that the School in question i.e. Daud Memorial Urdu Girls High School, Siwan, was established as a Linguistic Minority School, and same was taken over by the Government under Bihar Non Government Secondary Schools (Taking over of Management & Control) Act, 1981 and the School was inspected by officials of the Education Department and the Special Board Committee recommended recognition of the School and also in its report submitted the name of teachers working there.

The recognition was granted as minority School under section 18(2) of the Bihar Non Government Secondary Schools (Taking over of Management & Control) Act, 1981 and services of 5 teachers were approved. The appointment were made by the Governing Body of the School which was subject to approval of the Vidyalaya Seva Board. The services of Appellant was not approved at the time of recognition of the School.

Appellant claims to have been appointed on 18.09.1979 as teacher on temporary basis and on 16.06.1981



on permanent basis by the Managing Committee of the School and his name figured at Serial No. 5 and date of appointment as 18.09.1979 in the report prepared by the Special Board Committee of Education Department and submitted to the Competent Authority.

Pursuant to the order passed by the Apex Court, the Director, Secondary Education, Govt. Of Bihar issued an order dated 13.01.1986 and 07.03.1986 fixing guidelines for payment of salary to the teachers appointed in recognized minority Schools which provided that if a teacher was working within the sanctioned strength and his name appeared in the report of Special Board Committee, and was working on the date of recognition of the School salary was to be paid to such employees.

The District Education Officer, pursuant to circular dated 13.01.1986 and 07.03.1986 issued by the Education Department directed to pay the salary to the teachers whose names were included in the inspection report and thereafter by order passed by the District Education Officer, the salary of Appellant was paid w.e.f. date of recognition of the School as minority School i.e. 23.09.1982.

Director, Secondary Education, issued order on



19.09.1998 addressed to all the District Education Officer that teachers who have been appointed after 02.10.1980 and their services were not approved by the Vidyalaya Seva Board would not be paid their salary and accordingly, the salary of the petitioner was stopped.

Subsequently, the Vidyalaya Seva Board was abolished and replaced by Staff Selection Commission and District Education Officer, obtained a detailed report with regard to appointment of Appellant and others from the Governing Body of the School and forwarded the recommendation of the Managing Committee of the School regarding 3 teachers including the Appellant to the Secretary of Staff Selection Commission, Patna, vide letter dated 12.12.2005, and recommendatin with respect to all three teachers including the Appellant was rejected by the Staff Selection Commission vide order dated 11.01.2007.

Appellant filed CWJC No. 13834 of 2007 (Mojibul Haque Vs. State of Bihar) which was disposed of on 21.11.2011 and civil review arising out of writ petition being Civil Review No. 484 of 2011 was also disposed of on 10.04.2013 with direction to Special Director, Education to consider the claim of Appellant. CWJC No. 17105 of 2007



was filed by Zainul Haque which was disposed of on 05.04.2012 and CWJC No. 5401 of 2007 was filed by Shakila Bano which was disposed of on 12.09.2011.

CWJC No. 17105 of 2007 was filed by Zainul Haque with respect to approval of his name on the post of classical teacher. This Court directed Director, Secondary Education to pay salary to Zainul Haque as he was appointed in the year 1976 against the post of Classical Teacher and the Director, Secondary Education, after examining the records and recommendation made by the Managing Committee as well as report of District Education Officer, approved the services of Zainul Haque on the post of Classical Teacher i.e. Urdu and Persian and directed payment of his salary.

Counter affidavit was filed on behalf of Education Department in which it has been stated that in view of two resolutions dated 13.04.1978 and 04.10.1980 issued by the Education Department for the subject of Arabi, Farsi and Urdu only one teacher for classical subject was permissible as per staffing pattern and in the School in question only 9 posts of Assistant Teacher were sanctioned in which only one post of classical teacher was permissible and on said post Zainul Haque was appointed in the year 1976 which has been



approved by the competent authority pursuant to order passed in CWJC No. 17105 of 2007, as such Appellant cannot be appointed and for said reason Director has rejected the representation of Appellant by order dated 05.12.2016 as impugned before the writ court.

As far as, Shakila Bano is concerned pursuant to direction dated 12.09.2011 passed by this Court in CWJC No. 5401 of 2007, the claim of Shakila Bano was considered and since she had obtained the B.Ed. Degree and as such was eligible to be appointed as Assistant Teacher, her services were approved by the Director, Secondary Education, however, services of Appellant could not be approved against single sanctioned post of classical teacher as services of Zainul Haque appointed in the year 1976 was approved by the Director of Secondary Education pursuant to direction issued by this Hon'ble Court.

The writ court in detail has discussed and examined the claim of Appellant as well as legality and validity of order dated 05.12.2016 passed by Director, Secondary Education, and dismissed writ petition being devoid of any merit.

After hearing the parties and considering the materials available on record, this Court does not find any



infirmity or error in the order passed by the learned Single Judge requiring any interference by this Court.

Accordingly, the LPA is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
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