

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4030 of 2017

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1. Jitendra Kumar and Ors Son of Ramashray Singh, Resident of village - Telan Jokiya , P.S. Bhagwanpur, District - Begusarai
 2. Smt. Sweta Kumari, Wife of Hari Mohan Mishara, resident of village - Shokahara - 2, P.S. Fulwariya, District - Begusarai
 3. Smt. Rekha Kumari, Wife of Sri Rajeev Kumar Singh, resident of village - Miyan Chak, P.S. Begusarai, District - Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The District Education Officer, Begusarai
5. The District Programme officer Establishment , Begusarai
6. The District Accounts officer, Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K.Shahi, Sr. Advocate
		Mr.Satyam Shivam Sundaram, Advocate
For the Respondent/s	:	Mr.Manish Dhari Singh, AC to AG

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 28-06-2021 Heard Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioners and Mr. Manish Dhari Singh, learned AC to AG.

The grievance of the petitioners in the present writ petition is that on 27.02.2017 the Director, Primary Education, Government of Bihar declined to approve the services of the petitioners and held out that the appointment of the petitioners is illegal and directed recovery of the amount



already paid.

The respondent-Director has filed counter affidavit stating that although the appointment of the petitioners was made by the Managing Committee having jurisdiction to make appointment but at the relevant time there was ban in the school receiving grant-in-aid and as such the appointment of the petitioners is illegal and without jurisdiction.

In this proceeding the District Education Officer has filed the affidavit admitting the fact that so called letter of the Director putting ban on appointment was never received in the office of the District Education Officer and the selection of the petitioners was made and approval in terms of the rule was granted by the District Education Officer.

The Director in his affidavit has placed reliance on the Dispatch Register to contend that letter putting ban was dispatched to the District Education Officer, Begusarai.

The aforesaid stand of the Director stands belied by the counter affidavit filed by the District Education Officer and the information furnished to the petitioners under the Right to Information Act.

It appears that in 2007 ban was imposed by the Director but the ban was to be made operative only if the letter



of ban was actually intimated to the officer concerned and copy of such decision has been served. It has been denied by the respondent-District Education Officer in his counter affidavit. It is also placed on record by the petitioners by way of rejoinder to the counter affidavit by placing on record the information gathered by the petitioners under the Right to Information Act which indicates that the letter of ban was never received in the office of the District Education Officer.

Apart from the issue that the appointment was made by the Managing Committee having jurisdiction which has been approved by the District Education Officer who is competent under the Rule, one of the issue for adjudication in the present case is whether the respondents accept implementation of ban when no such decision was in fact communicated to the District Education Officer or receipt of any such letter in the office of the District Education Officer on affidavit and also under the Right to Information Act. Additionally, the issue is whether the State can put a ban on appointment in any school and whether such ban can be a ground to legitimately nullify the approval granted by the District Education Officer when the incumbents were duly appointed after following the due process having requisite qualification. It is to be noted here that teaching is a



continuing process and imparting instruction presupposes the existence of teacher. If teachers are not appointed then one can visualize the kind of education imparted in the school. The Managing Committee has jurisdiction under the law to make appointment. After appointment of the petitioners the District Education Officer having jurisdiction to grant approval of such appointment considering the necessity and satisfaction about the selection processes granted approval of selection and in that case the respondents Director was not justified in nullifying the selection and approval and directing recovery of salary paid to the petitioners. Mr. Shahi placed reliance on the judgment of this Court in the case of **Miss Kalpana Mandal Vs. State of Bihar & Ors.: 2003(4) PLJR 264**, paras 10 and 11 of which are quoted below for ready reference:-

10. In an aided minority school, the State authority may have the jurisdiction, so far the financial matters are concerned as grant-in-aid comes from the State of Bihar. But, so far the appointment, termination and dismissal of the staff and teachers of the school are concerned, it is the duty of the managing committee. The appointment of the teaching and non-teaching staff, however, are required to be approved by the District Superintendent of Education and in the instant case, it appears that the appointment of the



petitioner was duly approved by the District Superintendent of Education, Munger.

11. For the reasons aforementioned, it is held that respondent no. 4 has no authority in law to interfere in the matter of appointment of the petitioner, and, therefore, the order, as contained in Annexure-1 is willy without jurisdiction.”

Mr. Shahi has also drawn the attention of this Court to the decision of this Court in CWJC No. 10990 of 2015 to contend that similar issue was decided by this Court that there cannot be complete ban on appointment in minority or any other grant-in-aid receiving institution which are competent to make appointment through Managing Committee in the school. The appointments were made against the sanctioned vacant post after following due selection process and there is no any whisper in the counter affidavit that the petitioners are not eligible to be appointed and there was no any infirmity in the selection of the petitioners except the issue of so called ban imposed in 2007. Neither the letter was received in the office of the District Education Officer, Begusarai nor the Managing Committee has any communication with regard to the ban on appointment and as such the appointment and approval cannot be termed as arbitrary and illegal.

Additionally, the Court finds that if such ban was in



effect in that situation whether the institution can be deprived of jurisdiction to appoint teachers in larger interest of the students as the teacher is must for imparting instructions and appointment against the sanctioned vacant post is done by the Managing Committee. Once the State Government has sanctioned the post, the respondents have absolutely no jurisdiction to put ban on selection to be made in the grant-in-aid receiving institution. Putting ban would amount to nullify the effect of sanction of posts and usurping the power and function of the Managing Committee.

For the reasons aforesaid and the decision of this Court in CWJC No. 10990 of 2013 and the judgment of this Court in the case reported in 2003(4)PLJR 264, the Court is left with no option but to allow the writ petition.

Accordingly, the writ petition is allowed. The order as contained in Annexure-15 is quashed. The respondents are directed to restore all the legitimate benefits to the petitioners forthwith.

(Anil Kumar Upadhyay, J)

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