

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.179 of 2022

In

Civil Writ Jurisdiction Case No.6581 of 2020

Vinod Kumar Suman, Son of Ranjendra Prasad Singh, Presently Posted as
Director Rural Institute of Higher Studies, P.O. R.I. Birauli, P.S. Pusha,
District - Samastipur.

... .. Appellant/s

Versus

1. Md. Faisal Ahmad, Son of Late Masroor Ahmad, Permanent Resident of Village -Bari Borna, P.O. Borna, P.S. - Khagria. Presently residing at Birauli College Campus, P.O. R.I. Birauli, P.S. Pusha, District - Samastipur.
2. The State of Bihar, through the Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Joint Secretary, to the Government, Department of Education, Bihar, Patna.
4. The Director, Higher Education, Department of Education, Government of Bihar, Patna.
5. The Rural Institute of Higher Studies Birauli, P.O. - R.I. Rural Birauli, P.S. Pusha, District - Samastipur through its Chairman.
6. The Governing Body of Rural Institute of Higher Studies, Samastipur, through its Chairman.
7. The Education Minister, Department of Education, Government of Bihar - Cum - Chairman Rural Institute of Higher Studies, Birauli, Samastipur at Present New Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Purshottam Kumar Jha, Adv.
Mr. Shashi Bhushan Singh, Adv.
For the Respondent/s : Mr. Vinay Kumar Mishra, AC to AAG13

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 15-11-2022

Heard Mr. Purshottam Kumar Jha, learned
Advocate for the appellant and Mr. Vinay Kumar
Mishra for the State.



The appellant was appointed as Director of Rural Institute of Higher Studies, Birauli, Samastipur, which appointment letter was issued by the Education Department, which was found to be in breach of the rules of appointment which directed for appointment to the post of Director by the governing body constituted for the purpose from amongst the recommended candidates by the Selection Committee, so constituted for the purpose. All the processes by which the appellant was appointed, was within the rules except for the issuance of appointment letter by the Education Department in place of the governing body of the Institute.

The learned Single Judge found the breach of such appointment process to be fatal and set aside the appointment of the appellant, reserving the liberty to the respondent to start the process of filling up the post of Director of Rural Institute of Higher Studies, Birauli, Samastipur at the earliest in accordance with law.

The reasons which has weighed with the



learned Single Judge for setting aside the appointment of the appellant is the consistent line of reasoning of the Supreme Court in a number of cases (*refer to Dhananjay Reddy vs. State of Karnataka (2001) 4 SCC 9; T. Ramamoorthy vs. The Secretary, Shri Ramakrishna Vidyalaya High School, Tirupparaithurai, Tiruchirapalli District and Others, 1998 (4) L.L.N. 876; Captain Sube Singh and Others vs. L.T. Governor of Delhi and Others, 2004 6 SCC 440; State of Jharkhand and Others vs. Ambay Cements and Another, 2005 (1) CTC 223 and Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Others (2014) 1 SCC 161*) that where a power is given to do a certain thing in a certain manner, that thing must be done in that way or not at all.

Finding that the appointment of the appellant was by Education Department and not by the governing body or the Institute, the appointment was set aside.

Mr. Jha, learned Advocate for the appellant has attempted to assail the aforesaid



order on the ground that he could not have been faulted with as he had appeared before the Selection Committee, whereafter his name was recommended in alphabetical order before the governing body of the Institute. For an inadvertent breach of the rule of appointment where the Education Department pitched in and issued the appointment letter, the appellant ought not to be held responsible for the same. He further submits that there would be no gainsaying that rules have to be followed to the last letter, but in the present set of circumstances, it was not the case of the writ petitioner that there was any illegality in the appointment of the appellant on such post or that the appellant did not have basic qualification to be recommended for being selected for such post. It has further been submitted by the appellant that the complaint which has led to the quashment of the order of appointment of the appellant is by a person who had been arm-twisting the appellant all this while for monetary gains.

After having read the order impugned,



we are of the view that the learned Single Judge decided the correctness of the appointment process of the appellant, a collateral issue in a writ petition which was essentially filed for issuance of a notice of *quo warranto* to the appellant. No petition for issuance of a writ of *quo warranto* against the appellant could have been entertained notwithstanding the breach in the rules of appointment for the reason that the rules in that regard clearly stipulated that the holder of the post of Director of the Institute shall not be a government servant as the Institute is an autonomous body.

It is apodictic that no writ of *quo warranto* can be issued against non-substantive or non-government posts.

True it is that there had been a breach in the appointment process which has resulted in the removal of the appellant from the said post but the learned Single Judge, we must observe, erred in entertaining a collateral issue in a *quo warranto* writ proceeding. However, on finding that the



appointment letter to the appellant was issued by the Education Department and not by the governing body which only is authorized to issue appointment letter, we cannot otherwise find fault with the order of the learned Single Judge in setting aside such appointment and directing for filling up of the post forthwith after observing the rules in that regard.

Taking the submission of Mr. Jha on behalf of the appellant into consideration that it was only a minor breach, which appears to be inadvertent and there being otherwise no anomaly perceived in the entire process of selection by the Selection Committee and such list of selected candidates having been placed before the governing body, we find that completely non-suited the appellant would tantamount to a very harsh decision for no fault of the appellant.

Under the aforesaid circumstances, we modify the order of the learned Single Judge to the extent that in case the present order is brought to the notice of the governing body of the Institute as



also before the Education Department, necessary corrective measure may be thought of for restituting the appellant.

This observation has been made, keeping in mind the allegation of the appellant that he was being arm-twisted by the writ petitioner and when he refused to oblige, the writ petition was filed in which the appointment of the appellant was found to be irregular. However, this observation ought not to mean that the appellant be appointed on such post as imparting such meaning to this observation would amount to upending the import of the decision of the learned Single Judge, which has consciously not been upturned by us for the reason that there had been a breach in the issuance of appointment letter by the Education Department. However, we therefore caution the authorities concerned that in case the whole issue would be looked into, the otherwise suitability of the appellant shall also be considered and a final decision shall be taken whether to put the appellant to a fresh rigour of the selection



process or to straighten the record, remedy the defect and to appoint the appellant afresh by the governing body of the College.

With the aforesaid observation, the appeal is disposed of.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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