

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8437 of 2020

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Gupteshwar Mishra S/o Sri Amod Prasad Mishra resident of village and Post-Belsar, P.S.- Mehadiya, District- Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Education Department, Bihar, Patna.
2. Director, Primary Education, Bihar, Patna.
3. Deputy Director, Regional Education, Magadh Pramandal, Gaya.
4. District Magistrate, Arwal, District Arwal.
5. District Education Officer, Arwal, District- Arwal.
6. District Programme Officer (Establishment), Arwal, District- Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate
For the Respondent/s : Mr. Prabhakar Jha, GP-27

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 30-11-2022

Heard Mr. Bachan Jee Ojha, learned counsel for the petitioner and Mr. Prabhakar Jha, learned GP-27, for the State.

2. The present writ application has been filed seeking quashing of the letter no. 171 dated 10.02.2020, issued by the District Programme Officer (Establishment), Arwal by which all the retiral benefits of the petitioner has been forfeited without any cogent reason and without any basis.

3. Shorn of unnecessary details, the learned counsel for the petitioner submits that the petitioner was duly appointed as a Matric Trained Teacher on 01.02.1982 in Primary School, Murathi,



Gaya vide letter no. 60 dated 28.01.1982 and after verification of all the educational certificates, the payment of salary was given in favour of the petitioner, as is evident from the endorsement made in the service book. He further submits that after working more than 35 years, the petitioner superannuated on 31.12.2017 from the post of Head Master. It is contended that on being superannuated, the petitioner submitted all his necessary documents and the forms for payment of his retiral benefits and outstanding dues. In the meanwhile, one of the co-villager filed a complaint before the authority of the Education Department alleging that the certificate of the petitioner is forged and fabricated on the basis of which he obtained appointment.

4. It is further contended that on receipt of the complaint filed by co-villager, the concerned authorities asked the petitioner to submit his Matriculation certificate and in response thereto the petitioner submitted his Matriculation certificate. On verification, it has been found that the roll code/roll number is not clearly visible and, as such, the authorities found difficulty in making proper verification. It has also been informed by the Bihar School Examination Board that result of Bihar Board (1969-70) is partially destroyed and moreover the students, who appeared privately, their records are fully destroyed. It is the case of the petitioner that he participated in the Matriculation examination, as



a private student and hence in absence of any record available in the Board, any report is nothing, but an eye wash. He further contended that despite having been found the record is destroyed, verification has been made on the basis of the certificate, which is furnished by the petitioner wherein the roll code/roll number was not visible, surprisingly verification has been made by the Bihar School Examination Board and it has been found that Matriculation certificate was issued in the name of one another person, which ultimately resulted into passing of the impugned order, as contained in Annexure-7, withholding the entire retiral benefits of the petitioner.

5. Learned counsel for the petitioner also submits that at no point of time, any show-cause notice has been issued to him nor any opportunity of hearing has been provided before passing the impugned order that too much after the retirement of the petitioner.

6. In support of the aforesaid submission, learned counsel for the petitioner relies upon the judgment passed by the Division Bench of this Court in the case of **Bihar State Credit and Investment Corporation Ltd. Vs. Rajendra Singh in L.P.A. No. 1381 of 2009** wherein the learned Division Bench of this Court has been pleased to hold that the retiral benefit cannot be withheld only on the ground that a dispute has arisen with regard to the date of birth specifically when the employee had served



nearly for 30 years. Further reliance has been taken on the judgment passed by the learned coordinate Bench of this Court in the case of **Brahmanand Upadhyay Vs. The State of Bihar and others**, passed in **C.W.J.C. No. 9111 of 2005**, wherein the learned coordinate Bench of this Court has been pleased to hold that the respondent authorities cannot be allowed to raise a frivolous and a stale issue, such objection is not only unreasonable, but is an arbitrary obstruction to the benefits accruable of the petitioner and directed to ensure the payments of all retiral benefits.

7. On the other hand, learned counsel for the State vehemently contended that the certificate of the petitioner was duly verified by the Bihar School Examination Board and it has been found that the roll number and roll code, which has been mentioned in the certificate is of one Md. Nafis Ahmad. He further submits that time without number, the petitioner was asked to submit the self attested original mark-sheet of his matriculation certificate, so that the same can be sent to the Bihar School Examination Board for proper verification, but the certificate, which has been furnished was found to be illegible and, as such, on the basis of that certificate the verification has been made and on the basis of the said report, the impugned order has been passed.



8. Having heard the learned counsel for the parties and considering the materials available on record. Admittedly, before issuance of the impugned order, at no point of time any notice or opportunity of hearing has ever been given to the petitioner and the impugned order has been passed unilaterally on the basis of a report, which does not inspire any confidence, as the same is based on a certificate, in which the roll code/roll number is found illegible. This Court is also conscious of the fact that the petitioner had participated in the Matriculation examination, as a private student in the year 1969-70 and the results of the students, who appeared privately, their records are found fully destroyed, as has been informed by the respondent authority.

9. It is well settled that any action, which has adverse consequences in respect of a person cannot be taken without the person being heard, apart from the fact that the petitioner has already superannuated way back in the year 2017 itself and the payment of the petitioner cannot be withheld on the ground of so called forged and fabricated document without following the due process of law or initiating a departmental proceeding giving proper opportunity to the petitioner to rebut the allegation.

10. It is the Cardinal Principles of Administrative Law that a person cannot be condemned unheard, otherwise the impugned order would be a nullity. Any order causing civil and



evil consequences must be in conformity with the principles of natural justice. It goes without saying that the petitioner was appointed as Matric Trained Teacher on 01.02.1982 in a Primary School and he superannuated in the year 2017, in the meantime, the petitioner has been allowed different pay scales on the verification of the educational certificate, but at no point of time any infirmity has been found. The reliance has been made by the petitioner on a judgment rendered by the Division Bench of this Court in the case of **Bihar State Credit and Investment Corporation Ltd. Vs. Rajendra Singh** (Supra) would also covers the case of the petitioner, as retiral benefit cannot be withheld only on the ground that a dispute has arisen with regard to the date of birth specifically when the employee had served nearly for 30 years.

11. Even for the purpose of coming to the conclusion that the appointment has been obtained by playing fraud a regular departmental proceeding is required in accordance with law, which has never been initiated against the petitioner.

12. The law stands well settled that even in the matter of forged appointment proper proceedings are required to be held with an opportunity of defence. Reference may be made to **(2007)12 SCC 146 (Punjab State Electricity Board and Ors. Vs. Leela Singh)** observing at paragraph 5 as follows:



“The charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee.”

13. In view of the aforesaid facts, circumstances and the position obtaining in law, the impugned order, as contained in letter no. 171 dated 10.02.2020, passed by the District Programme Officer (Establishment), Arwal is hereby quashed and the respondent authorities are directed to ensure the payment of all the admissible retiral benefits to the petitioner preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

14. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2022
Transmission Date	NA

