

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23048 of 2018

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Vinod Kumar @ Vinod Kumar Thakur S/o Harendra Thakur, R/o Manpura,
P.S. Vaishali, District- Vaishali.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. Director, Secondary Education, Department of Education, Govt. of Bihar, Patna.
4. Deputy Director, Secondary Education, Department of Education, Govt. of Bihar, Patna.
5. Regional Deputy Director, Secondary Education, Tirhut Division, Muzaffarpur.
6. District Education Officer, Muzaffarpur.
7. District Education Officer, Motihari.
8. District Education Officer, West Champaran.
9. District Education Officer, East Champaran.
10. District Education Officer, Vaishali.
11. District Education Officer, Sitamarhi.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Adv.
For the Respondent/s	:	Mr. Mrigender Kumar, AC to GP-20 Mr. Alok Kumar Shahi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 28-06-2022 The matter comes up on the mentioning made before the Division Bench. Writ petition is accordingly heard finally at this stage.

Before deciding the writ petition, it is noticed that there is an I.A. filed for being made an intervenor. After some argument, learned counsel appearing for the applicant in the I.A.



prays to withdraw the I.A. The same is accordingly dismissed.

Heard both the counsels.

The brief facts, which deserve to be noticed for adjudication of this case are that an advertisement was issued for inviting application for appointment on the post of clerk in the year 1987 as is apparent from the Bihar Gazette dated 14th January, 1987. Petitioner applied for the said post and was found to be eligible and was accordingly selected at place in the select list at Sl. no. 3 by three members committee. The said selection was scrutinized by the Regional Deputy Director and vide his order dated 20th March, 1990 found the selection conducted in the year 1987-88 as in conformity with the laid down norms and also as per the falling of roster in reservation. It appears that the said selection was again subjected to scrutiny and a report was submitted by the District Education Officer, Betiya, who has observed that the procedure for selection was followed and the rules relating to reservation had also been followed.

The petitioner was continued thereafter. It appears that one petition came to be filed bearing no. 5602/1997 by one Pramod Kumar relating to the selection process and on the said basis, an order came to be passed on 14th March, 2000 holding the selections of the clerks who are 10 of them to be illegal and



not in accordance with rules. The Director has made observations that the said selections were made without following the circulars issued by the department of administration from time to time. It was also observed that the selection was done without following roster prints and without issuing advertisement and in an illegal manner. The order also mentions of having issued notices to the petitioner and similarly against other clerks who were appointed under the advertisement of 1987 and also states that in spite of notice, the concerned persons which included the petitioner did not appear and did not submit their stand before the Director. Accordingly, their appointments were cancelled.

Upon issuing of the aforesaid order dated 15.04.2000, it appears that a writ petition came to be filed by five of them before this Court bearing C.W.J.C. No.4333/2000 Bharat Ram and others vs. State of Bihar & Anr.

So far as petitioner is concerned, he preferred an appeal before the Director. In the appeal preferred by the petitioner and one other Manoj Kumar Mishra, order came to be passed on 13th March, 2001, whereby the effect an operation of the order dated 15.04.2000, so far as the petitioner and one Manoj Kumar Mishra is concerned, was stayed with immediate



effect. The Director further directed the appeal to be listed on 12.04.2001.

As regards the writ petition filed before this Court is concerned, the High Court vide its judgment dated 08.04.2005, held the selection procedure adopted to be irregular method of appointment and also found that different yardstick has been adopted by the Director while passing the impugned order. Accordingly, the High Court quashed the order of cancellation of appointment and reinstated the petitioners therein with back-wages. The order was complied with and all the clerks who are reinstated and it is an admitted position that as on today all of them are working.

The petitioner in terms of an interim order passed on 13/14.03.2001, continued to perform his duty, thereafter, again the issue was taken up by the Regional Deputy Director who sought clarification relating to the interim order passed dated 15.01.2001 from the Director and till that time stopped the salary of the petitioner vide his letter dated 7th March, 2018.

Vide subsequent order dated 9th April, 2018, the services of the petitioner were dispensed with effect from 15.04.2000 on the basis of the information/ direction received that after passing order 15.04.2000, there is no order passed by



the department in relation to Vinod Kumar and Manoj Kumar Mishra.

Aggrieved thereto, the present petition has been filed. Respondents in their reply have stated that the file relating to the interim order dated 15.04.2000, Memo No. 260 dated 15th March, 2001 and further proceedings, should not be traced and no other final order has been passed after order dated 15.04.2000, and therefore, the same has remained effective. It is stated that the petitioner did not approach this Court to get the order set aside as was done by other similarly situated candidates and, therefore, the services of the petitioner had been, therefore, rightly dispensed with.

I have considered the submissions.

Admittedly, the order dated 15.04.2000 was not acted upon so far as petitioner is concerned and he was allowed to continue. As regards others, the High Court has already quashed the order. It is not a case where the respondents have alleged the stay order dated 15th March, 2001, passed by the Director to be a forged order. The only submission is that the concerned file is not traceable.

In these circumstances, the interpretation of the respondents that on account of non-traceability of the file, the



earlier order dated 15.04.2000 will become effective cannot be treated as an acceptable stand. It is the last order passed by the Director which will continue to remain effective in absence of any further orders passed. Accordingly, it has to be presumed that the order of 15.03.2001 has remained effective more so as petitioner had continue to perform his duties and has also drawn salary. This Court also further notices that the respondents were having full knowledge about this Court having already taken a view in writ petition no. 4333/2000, relating to the order passed by them and the order dated 15.04.2000 was quashed. The selection procedure adopted was found to be regular. In the circumstances, the order would have the same effect for the petitioner as with respect to other clerks who have been reinstated. The order dated 15.04.2000 will have no effect so far as it relates to the petitioner.

There was, therefore, no occasion to again revive the dispute and remove the petitioner from a retrospective date namely from 15.04.2003, by the impugned order dated 09.04.2018.

Therefore, this writ petition deserves to be allowed and is allowed.

Accordingly, the order dated 29.10.2018 and



09.04.2018 is hereby quashed and set aside with all consequential benefits of reinstatement and continuity of service and back-wages as allowed earlier for similarly placed persons.

No cost.

The compliance shall be made within a period of three months.

(Sanjeev Prakash Sharma, J)

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