

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2456 of 2008

Yugeshwar Roy, son of Late Baldev Roy, r/v Mohamadbiga, P.O.- Basudeopur, Via- Nagra, P.S.- Kalyanpur, District- Samastipur, at present working as Joint Secretary, Bihar School Examination Board (Higher Secondary) Budha Marg, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Human Resource Development Department, Government of Bihar, Patna.
3. The Joint Secretary, Secondary Education, Government of Bihar, Patna
4. The Director, Secondary Education, Government of Bihar, Patna.
5. Bihar School Examination Board (Higher Secondary) Budhamarg, Patna through its Chairman.
6. The Secretary, Bihar School Examination Board (Higher Secondary) Budhamarg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Advocate
For the Respondent/s	:	Mr. Satyabir Bharti, Advocate
(BSEB)		Mr. Abhishek Anand, Advocate
		Ms. Sushmita Sharma, Advocate
For the State	:	Mr. Faiz Ahmad, AC to GP-14

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-02-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:-

"That this is an application for issuance of an appropriate writ/ directions for quashing the order contained in Memo No. B.S.E.B. (S.S.)/ 185/ Estab/0808 dated 21.1.2008 passed by Secretary, Bihar School Examination Board, Patna (herein after referred to as the Board) whereby and whereunder petitioner has been demoted from



the post of Joint Secretary to the post of Deputy Secretary in the Board and he has been posted as Deputy Secretary till further order. The petitioner further prays to allow him to function as Joint Secretary of the Board with all consequential benefits and also grant any other reliefs for which petitioner is found entitled in the facts and circumstances of the case."

3. Matter relates to promotion and reversion to the post of Joint Secretary in the then Bihar Intermediate Education Council under the then Bihar Intermediate Education Council Act, 1992 (for short 'Act, 1992').

4. The petitioner was in the cadre of Deputy Secretary in the then Bihar Intermediate Education Council, he was promoted to the post of Joint Secretary on 07.05.1997 and it was cancelled on 21.07.1999. He had filed writ petition and it was allowed while remanding the matter on 29.06.2000. Further show cause notice was issued on 07.08.2000 as to why reversion order shall not be ordered. Thereafter on 06.11.2001 reversion order was passed from the post of Joint Secretary to that of Deputy Secretary. Thereafter, once again he has invoked remedy before this Court and it was disposed of on 26.04.2007 in the light of the Bihar Intermediate Education Council (Repeal) Act, 2007 (for short 'Act, 2007'). Under the Act, 2007 three members committee was constituted to decide whether



petitioner could be promoted to the post of Joint Secretary from the cadre of Deputy Secretary or not? Thereafter on 21.01.2008, an order was passed by the Secretary, Bihar School Examination Board that the petitioner is not entitled to hold the post of Joint Secretary and he was demoted. Hence, the present petition.

5. Learned counsel for the petitioner submitted that promotion of petitioner to the post of Joint Secretary on 07.05.1997 was in accordance with Section 25 of the Act, 1992. Petitioner even though is in the cadre of Deputy Secretary in the then Bihar Intermediate Education Council (Now Bihar School Examination Board) and he is holding the post of equivalent rank of Bihar Education Service Class I or Deputy Registrar of the University. Hence there is no lacuna in promoting him to the post of Joint Secretary.

6. Learned counsel for respondents resisted the aforesaid contention and submitted that promotion to the post of Joint Secretary is not one of the source of recruitment to the post of Joint Secretary in the then Bihar Intermediate Education Council and it is only appointment by rank of Bihar Education Service Class I or Deputy Registrar of the University. He/she shall be appointed or deputed by the State Government. Therefore, there is no mode of promotion to the post of Joint



Secretary from the cadre of Deputy Secretary or equivalent cadre. Hence, there is no infirmity in the impugned order.

7. Heard the learned counsels for the respective parties.

8. Core issue involved in the present *lis* is whether order of promotion to the post of Joint Secretary from the cadre of Deputy Secretary in the then Bihar Intermediate Education Council is in order or not? Joint Secretary post is identified at Section 25 of the Bihar Intermediate Education Council Act, 1992.

Section 25 of the Act, 1992 reads as under:-

"25. Joint Secretary. - (1)

The Joint Secretary shall be a whole-time officer. He shall be of the rank of Bihar Education Services Class I or Deputy Registrar of the University. He shall be appointed or deputed by the State Government. Joint Secretary shall work under the control of Secretary.

(2) There shall be two posts of the Joint Secretary in the Council. One Joint Secretary shall be incharge of the work relating to establishment and other of the Administrative work and examination work."

Reading of the aforementioned Section to fill up the post of Joint Secretary, there is no method of recruitment to the post of Joint Secretary through promotion. On the other



hand, what is provided is officer shall be rank of Bihar Education Services Class I or Deputy Registrar of the University. He shall be appointed or deputed by the State Government. Therefore, one has to draw inference that there is no method of recruitment to the post of Joint Secretary by means of promotion. Further, post of Deputy Secretary has not been shown as rank of Bihar Education Services Class I so as to convert promotion to that of appointment. In the absence of petitioner pointing out that the post of Deputy Secretary is equivalent to the rank of Bihar Education Services Class I, he is not entitled to be appointed to the post of Joint Secretary. His promotion to the cadre of Joint Secretary is contrary to Section 25 of the Act, 1992. Therefore, there is no error committed by the authorities while passing order on 21.01.2008. Hence the present petition stands dismissed.

9. At this stage, learned counsel for the petitioner submitted that three men committee's report was required to be approved by the State Government and then only the decision of the committee is required to be given effect. In this regard, it is necessary to reproduce Section 3 of Bihar Intermediate Education Council (Repeal) Act, 2007:-

"3. Adjustment of employees of the Bihar Intermediate



Education Council. – (1) On and from the date of repeal of the Bihar Intermediate Education Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time State Government ha taken such final decision as is provided hereinafter.

(2) The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act:

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act.

(3) After the scheme approved by the Government is enforced it shall be fully implemented in its approved form and intent within three months from the date of its enforcement.

(4) The Committee of Secretaries constituted under sub-section (2) of Section 3 above shall be competent to decide utility and deployment of employees of the Council during transition period and it



shall not be open to any employee to question decision of Committee of Secretaries:

Provided that the State Government shall be competent to amend, modify, alter or substitute the scheme so framed for removal of any difficulty in its implementation."

Reading of Sub-Section 2 of Section 3, question of constituting committee read with the source of the report of the committee and its approval by the State Government, it is in respect of scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of the employees of the Council. If the three men committee report was not placed before the State Government in that event petitioner is at liberty to approach the State Government.

(P. B. Bajanthri, J)

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AFR/NAFR	
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