

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15917 of 2014

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Smt. Shashi Prabha Kumari Wife of Praveen Kumar Resident of Village P.O.
Sihali, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
4. The District Education officer, Sitamarhi
5. The Range Education Officer, Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
For the Respondent/s : Mr. D.K. Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 05-12-2023

1. Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The petitioner has filed the instant application
praying for quashing the order contained in memo no.620 dated
23.10.2006 passed by the Regional Deputy Director of
Education, Tirhut Division, Muzaffarpur terminating the
petitioner from the post of Assistant Teacher in Basic School,
for quashing the appellate order contained in memo no.624
dated 13.5.2013 passed by the Director, Primary Education,
Patna, for reinstating the petitioner as Assistant Teacher with all
consequential benefits.



3. The facts in brief are that pursuant to a notice board advertisement in the month of April-May, 1995 put up in the office of the respondent no.3 for appointment as Assistant Teachers in different Government schools, the petitioner along with others being qualified made an application. The petitioner appeared for interview, was declared successful and was appointed on 26.6.1995. She gave her joining on 23.1.1996. It is the case of the petitioner that she was also sent for training for one year for which she was relieved on 5.5.2001.

4. It is submitted by learned counsel for the petitioner that the petitioner was surprised to receive a notice dated 24.5.2003 directing the petitioner to appear before the respondent no.4 along with relevant documents relating to her appointment. The petitioner requested for some time as the original documents were not available with her. Thereafter no letter/notice was issued and by order dated 29.5.2004 issued by the respondent the petitioner was removed from the post of Assistant Teacher on the ground of her appointment being illegal. The petitioner challenged the same by filing CWJC no.10306 of 2004 which was allowed by order dated 12.4.2006 and the matter was remitted back to the authorities to proceed in the matter a fresh after giving the petitioner due opportunity of



haring in accordance with law. Accordingly the petitioner gave her joining but the same was not accepted. This led to the petitioner filing a contempt application (MJC no.210 of 2007) alleging violation of the order dated 12.4.2006. During pendency of the contempt application the order impugned dated 23.10.2006 was passed terminating the petitioner from service.

5. The petitioner moved this Court against the order of termination dated 23.10.2006 by filing CWJC no. 8716 of 2012. The writ application was disposed of by order dated 8.5.2012 giving liberty to the petitioner to challenge the same before the Appellate Authority. Accordingly, the petitioner filed his appeal, however, the Appellate Authority was pleased to reject the said appeal by the order impugned dated 13.5. 2013. It is against the order of termination dated 23.10.2006(Annexure-1) terminating the petitioner as an Assistant Teacher as also the order dated 13. 5.2013 (Annexure-1/A) passed by the Appellate Authority, rejecting the appeal preferred by the petitioner, that the instant application has been preferred.

6. It is submitted by learned counsel appearing for the petitioner that the orders impugned are not sustainable for the reason that so far as the contents of the notification dated 11.11.1975 is concerned, whereby only trained teachers were to



be appointed, the same had been relaxed/withdrawn by the resolution dated 5.3.1991 (Annexure-18) of the Human Resources Development Department, Government of Bihar. It is for this reason that the petitioner was granted leave and sent for training. Further, the case of the petitioner stands on a similar to that of Praful Kumar Chaudhary, whose writ application (CWJC no. 9406 of 2006) was allowed by order dated 17.5.2011.

7. The application is opposed by the learned counsel appearing for the State who relying on the counter affidavit filed by the respondent no.3 submits that it was one Bhola Ram who while acting for a short period of one and half months as Incharge Regional Deputy Director of Education, Tirhut Division made illegal appointments including that of the petitioner. He was never notified as the Regional Deputy Director of Education. The petitioner being untrained matric could not be appointed on the post of assistant teacher in violation of the notification dated 11.11.1975. The dispatch register did not show issuance of the petitioners appointment letter. The petitioner gave her joining after much delay, which was only for the reason that the post was not sanctioned. For all these reasons, the order impugned is a well considered order, there is no merit in the writ application and the same be



dismissed.

8. Having heard learned counsel for the parties, having perused the material on record and especially the order terminating the petitioner as assistant teacher, it would transpire that the order has been passed on mainly four grounds.

9. The first ground in the order of termination dated 23.10.2006 is that the petitioner being matric untrained, in view of notification no. 2749 dated 11.11.1975 could not have been appointed as an assistant teacher. The petitioner has brought on record the resolution of 1991 issued under the signature of the Commissioner-cum-Secretary, Education, Human Resource Development Department, Bihar, Patna which categorically provides that the requirement of a person being trained for appointment as a teacher is done away with. The respondents have neither contested the averments with respect to the said resolution as made in paragraph no. 41 of the writ application nor have they answered the contents of the resolution dated 5.3.1991. As such the Court has to accept the same that the requirement of necessarily being matric trained was done away with in 1991 and the same was not required at the time of appointment of the petitioner which was on 29.6.1995.

10. So far as the second ground in the order of



termination is concerned, it states that the panel was made for the first time in the year 1990. It may be stated here that the contentions of the petitioner in the writ application that the respondents came out with a notice board advertisement, the petitioner applied against the same, she appeared for interview and was finally appointed on 26.6.1995 have not been denied by the respondents in the counter affidavit. So far as the name of the petitioner not figuring in the panel prepared in the year 1990 is concerned, the same is of no consequence. The petitioner at no points of time claims that she was an applicant and empanelled.

12. So far as the other ground in the order of termination is concerned, it states that the Regional Deputy Director of Education, the person whom the petitioner claims to have issued the appointment letter namely Shri Bhola Ram was working as incharge Regional Deputy Director of Education at the relevant time and was not notified by the department for making appointments. It may be stated here that the petitioner was appointed in June 1999. Even as per the counter affidavit filed by the respondents, it is stated that they discovered about the illegality of the petitioner's appointment in the year 2001. Nevertheless, no action whatsoever was taken against the



petitioner for the next two years and further, even now there is no statement as to what steps and action was taken against the aforesaid Bhola Ram the then Regional Deputy Director of Education.

13. The fourth and the last ground taken by the respondents in the order of termination dated 23.10.2006 is that neither the letter of appointment dated 26.6.1995 nor the letter calling for interview dated 6.6.1995 is found to be issued in the dispatch register. Firstly, it is not the petitioner who is responsible for maintaining the dispatch register. Secondly, so far as the contents of the counter affidavit is concerned, while on one hand the respondents state that the dispatch register does not show the issuance of the said letters, on the other hand, they admit that the complete records of appointment during the tenure of the aforesaid Bhola Ram is not available with them. Besides the above, it is the categorical case of the petitioner that Shri Bhola Ram who was the Incharge Regional Deputy Director of Education at the relevant time, was discharging all duties and functions attached to the said post. The appointment of the petitioner was made against a sanctioned post. It was due to shortage of teachers that resulted in the policy of the State Government being revised which led to passing of the



resolution dated 5.3.1991 (Annexure-18) doing away with the requirement of training being mandatory.

14. For all the above reasons, the Court finds merit in the writ application and the order termination dated 23.10.2006 as also the order passed by the Appellate Authority dated 13.5.2013 to be not sustainable. Accordingly, the order of termination dated 23.10.2006 (Annexure-1) and the order of the Appellate Authority dated 13.5.2013 (Annexure-1/1) are both set aside.

15. The writ application is allowed with all consequential benefits to be paid to the petitioner within a period of 4 months from the date of receipt/ production of a copy of this order.

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	8.12.2023
Transmission Date	

