

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.970 of 2019

In

Civil Writ Jurisdiction Case No.14571 of 2014

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The Managing Committee, M.W.E. High School through its Secretary, Md. Faizi Ali, aged about 38 years, male, S/O Sahab Uddin, R/O village-Sujawalpur, P.O.- Shankarpur, District- Munger- 811201.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, (the then Human Resource Development Department), Government of Bihar, Patna.
2. The Principal Secretary Education Department, (the then Human Resource Development Department), Government of Bihar, Patna.
3. The Director Secondary Education, Education Department, (the then Human Resource Development Department). Government of Bihar, Patna.
4. The Special Director Government of Bihar, Patna.
5. The Regional Deputy Director of Education Munger Division, Munger.
6. The District Education Officer Munger.
7. The District Programme Officer (Establishment) Munger.
8. Shashi Bhushan Singh S/O Krishnandan Singh R/O Fort Area, Near Forest Office, P.O.- Munger, P.S.- Kotwali, District- Munger.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Binod Kumar Singh, Adv. Ms. Vagisha Pragya Vacaknavi, Adv.
For the Resp. No.8	:	Mr. Tej Bahadur Singh, Sr. Adv. Mr. Brisketu Sharan Pandey, Adv. Mr. Abhishek Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-04-2023

Heard Mr. Binod Kumar Singh, learned

counsel for the appellant and Mr. Tej Bahadur Singh,

learned senior advocate assisted by Mr. Brisketu Sharan

Pandey for the respondent no.8. There is no



representation on behalf of the State.

The respondent no.8 had earlier come up before this Court vide CWJC No. 14571 of 2014 for quashing of the order dated 12.08.2014 issued by the Secretary, M.W.E. High School, Munger (appellant herein) whereby the services of the respondent no.8 had been terminated without issuing any show-cause notice to him and without such order having the approval of the Director, Secondary Education and for consequent relief of a direction to release the salary of the respondent no.8 from March, 2013 till the date of the order of termination purportedly passed on 12.08.2014.

The ground raised by the respondent no.8 before the writ court was that the decision to terminate the services of the petitioner as a Teacher of a minority school was against the prescriptions in the 2006 Rules which clearly provides for compliance of natural justice viz. hearing of the aggrieved party before any decision concerning him is taken and the approval of the Director



for removal or termination of an employee.

The case of the respondent no.8 before the learned Single Judge was that against an advertisement of 1992, he was appointed as a Teacher in MWE High School at Munger and within five years of his appointment, his services were approved by the then Vidyalaya Seva Board.

The respondent no.8 urged before the writ Court that such decision of termination of his services was taken because of the internecine fight between the two sets of Managing Committees operating in the school.

It was perceived that respondent no.8 was close to the Secretary of the other Managing Committee, which Managing Committee was not given the approval by the Director, Secondary Education. Precisely for this reason, the members of the present Managing Committee have targeted the respondent no.8 and created a situation whereby the respondent no.8 has



been terminated from service.

The respondent no.8 had also approached the District Programme Officer and the District Education Officer, Munger but when nothing happened, he approached the Regional Deputy Director of Education, Munger.

According to his information, the District Education Officer, Munger had sought a clarification from the Regional Deputy Director of Education, Munger with respect to payment of salary of respondent no.8 and it was decided that the respondent no.8 ought to be paid for the work that he had done.

The learned Single Judge had to decide the matter by pressing the doctrine of non-traverse as no counter affidavit was filed on behalf of the Managing Committee of the school in question.

Under the aforementioned circumstances, the writ Court observed that since the services of the respondent no.8 had been approved by the Vidyalaya Seva Board



and the termination did not have the approval of the Director of Secondary Education in accordance with the provision of the Bihar Non-Government Secondary School (Taking over Management and Control) (Amendment) Act, 2011, the termination was bad in the eyes of law and the respondent no.8 was required to be reinstated in service.

With the setting aside of the order of termination, the respondent no.8 was to be deemed to be in service of the school, entitling him to receive payment of full salary from March, 2013 to 12.08.2014 and 75% of the salary for the period 12.08.2014 till date.

The respondents in the writ petition including the District Education Officer, Munger were directed to take steps for payment of salary to respondent no.8 as indicated by the Court within a period of three months from the date of receipt/production of a copy of the order of the writ Court.



Thereafter, the present appeal has been filed by the Managing Committee of the school which has been held to be the genuine Managing Committee of the school since 2014.

Though, accepting that no material was brought on record before the learned Single Judge for him to have passed any other order except the order which has been passed but the facts reveal that the respondent no.8 had obtained the employment by practicing fraud and misrepresenting his degree.

The appellant/Managing Committee of the school sought the permission of this Court, which was granted, to bring on record the documents to prove that the appointment of respondent no.8 stood vitiated on account of fraud.

It has been brought to our notice by the appellant that the issue with respect to genuineness of the certificate offered by the respondent no.8 at the time of his appointment arose way back in the year 2007,



when a complaint was lodged against the respondent no.8 that he does not have the requisite qualification for being appointed as a Teacher in the Hindi Department.

On the basis of such complaint, an enquiry was conducted and it was found that the degree which was offered by the respondent no.8 was of BA (Honours) with Hindi but later, it was found that there was difference in the mark-sheets and the respondent no.8 had passed his pass-course in Hindi but honours in History. He was also not trained in Hindi but in physical education only.

When these facts were discovered, the matter was reported to the District Magistrate, Munger who promptly directed for lodging of the F.I.R. against the respondent no.8 and consequently F.I.R. was registered against him, which case went in trial.

He further submits that because of this, the Managing Committee took a resolution way back in the year 2007 only, of terminating the services of the



respondent no.8 but, the matter was kept pending for reasons which could not initially be known by the Managing Committee but later, it was discovered that the father of the respondent no.8 was an employee in the District Education Officer's office who had stage-managed to keep all these developments under wraps or else the Managing Committee would have gone full hog in taking this resolution of terminating the services of the respondent no.8 to its finality.

It has further been submitted on behalf of the Managing Committee that necessary communication was made to the Director, Secondary Education but, the matter since then has been hanging fire.

Mr. Binod Kumar Singh, learned Advocate for the appellant/Managing Committee of the School, therefore, submits that because certain necessary facts could not be brought to the notice of the learned Single Judge, the order of termination was set aside and direction was issued for making payment to the



respondent no.8 from the date of the order of termination till the date when the same was set aside and 75% of the salary thereafter.

As opposed to the contentions raised on behalf of the appellant, Mr. Tej Bahadur Singh, learned senior Advocate for the respondent no.8 has submitted that once a matter was decided by the learned Single Judge even when opportunity was granted to the appellant to contest the facts brought forth by him in the writ petition, the findings of the learned Single Judge cannot be disturbed so lightly. He has further submitted that in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that finding of the Single Judge is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the learned Single Judge unless both sides agree for a fairer approach on relief (refer to ***The Management of Narendra & Co. Pvt.***



***Ltd vs Workmen of Narendra & Co, (2016) 3 SCC 340;
BPSC through its Secretary Vs. Nitu Kumari and others,
2023 (2) PLJR 80.***

It has further been submitted that very conveniently, the appellant/Managing Committee has sent a communication to the Director of Secondary Education for approval of the order of termination after the judgment has been passed by the learned Single Judge in the writ petition preferred by respondent no.8. It has further been stated that even the criminal case which had been lodged against respondent no.8 ended in acquittal for paucity of any evidence in support of the charge of forging the records / mark-sheets for obtaining employment. Apart from this, it has been submitted that only because of the dispute between two the Managing Committees which wanted to have their field in the school and the respondent no.8 being perceived as close of one of the Committees which lost in the fight, the respondent no.8 has been targeted for no apparent good



reason.

Once the services of respondent no.8 had been affirmed by the Vidyalaya Seva Board after verification of all the certificates offered by him at the time of appointment, such objections could not have been raised merely because the new Managing Committee of the School is not favourably inclined or disposed towards respondent no.8.

That apart, the decision of the Managing Committee to terminate the services of the petitioner is against the provisions contained in Bihar Non-Government Secondary School (Taking over Management and Control) (Amendment) Act, 2011 which categorically provides that a Managing Committee may terminate from services, dismiss or demote Headmaster or teachers of the School with the approval of the Director, Secondary Education.

Mr. Tej Bahadur Singh, learned senior Advocate submits that the order of termination by the



Managing Committee does not get implemented unless it has the approval of the Director of Secondary Education. He even goes to the extent of raising an argument that even for initiating a proposal for terminating the services of a teacher or a headmaster of a Minority School, approval of the Director of Secondary Education is necessary.

In the aforesaid circumstances thus, it has been prayed that this appeal ought to be dismissed in limine.

After having heard the learned counsel for the parties and having noticed the developments which have taken place in the school in question since 2007, we find that the allegation in the complaint against the genuineness of the academic certificate offered by the respondent no.8 was raised in the year 2007 only i.e. even before the new Managing Committee had been approved in the year 2014.

The District Magistrate, Munger, on perusal



of the complaint and communication from the Managing Committee had directed for lodging of the FIR against respondent no.8.

True it is that the charges against respondent no.8 could not be proved and that also because of the Managing Committee at whose behest the case was lodged, not bringing any material to prove the charge against respondent no.8 and the order of termination not having the approval of the Director of Secondary Education but, we deem it necessary to direct the Director of Secondary Education, who has not been represented here in this appeal, to give proper consideration to all these facts before either approving or disapproving the decision of the Managing Committee to terminate the services of the respondent no.8.

We also reckon that the Director of Secondary Education ought to have been communicated regarding this for its approval much before. This further plods us to consider that there could be some substance



in the argument of respondent no.8 that he is being targeted by the Managing Committee of the School.

Under such circumstances, the only way out to reach the truth is to relegate the issue to the Director of Secondary Education, who while applying his mind over the proposal of and the decision of the Managing Committee to terminate the services of the respondent no.8, take into considerations all these facts and then pass a final reasoned order. He shall also hear the parties before taking any final decision with respect to affirmation of the decision of the Managing Committee to terminate his services.

This shall be done within a period of 60 days to be counted from the date when a copy of this judgment shall be brought to the notice of the Director of Secondary Education by either of the parties herein in this appeal.

Till such time a decision is taken, the respondent no.8 shall be paid his full salary from March



2013 to 12.08.2014.

In case the Director, Secondary Education does not approve of the order of termination of the respondent no.8, the respondent no.8 would be inducted in the service of the School and would be paid 75% of the salary for the period in the interregnum i.e. from 12.08.2014, till his reinstatement in his service. He shall thereafter be paid his regular salary.

In the event of the approval to the decision of the Managing Committee of terminating the services of the respondent no.8, it would be open for respondent no.8 to challenge such decision in a proper forum.

We thus, dispose of this appeal by modifying the order of the learned Single Judge accordingly.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.05.2023
Transmission Date	

