

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2290 of 2023

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Renu Kumari @ Renu Devi, D/o Late Upendra Jha, Wife of Shri Vijay Kumar Mishra, R/o Ward No. 11, P.O.- Deep, P.S. Lakhanour, District- Madhubani 847403

... .. Petitioner

Versus

1. The State of Bihar through Secretary Human Resources Development Department, Patna.
2. The State Appellate Authority, Education Department, Bihar Patna.
3. The District Education Officer, Madhubani.
4. The District Program Officer (Estb.) Madhubani.
5. The Block Education Officer, Lakhnaur, Madhubani.
6. The Block Development Officer cum Member Secretary, Block Development, Lakhanour, Madhubani.
7. The Panchayat Secretary cum Secretary, Panchayat Employment Unit, Village Panchayat Deep (West), Madhubani.
8. The In-Charge Headmaster, Madhya Vidyalaya, Deep (West), Block Lakhanour, Madhubani.
9. The Secretary, Bihar Sanskrit Shiksha Board, Patna.
10. The Examination Controller, Bihar Sanskrit Siksha Board, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. D.K. Sinha, Sr. Advocate
		Mr. Girish Chandra Jha, Advocate
For the State	:	Mr. Sanjay Kumar, AC to GP 23
For the B.S.S.B.	:	Mr. S.S. Sundaram, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-09-2023 Heard Mr. D.K. Sinha, learned Senior Counsel for the

petitioner, Mr. Sanjay Kumar, AC to GP- 23 for the State.

2. Mr. Satyam Shivam Sundaram, learned counsel

appears for the Bihar Sanskrit Shiksha Board and its authorities

(Respondent Nos. 9 and 10).

3. This writ application has been filed for setting aside

the Memo No. 318 dated 02.12.2019 issued by Respondent No. 6



whereby and whereunder the petitioner has been dismissed from service and a direction has been issued to recover the entire salary paid to her. Petitioner also prays for setting aside the Memo No. 4318 dated 30.11.2021 issued by Respondent No. 3 and the consequential order contained in Memo No. 1918 dated 15.12.2021 issued by Respondent No. 5.

4. The petitioner has further prayed for quashing the order dated 29.06.2022 passed by respondent No. 2 whereby and whereunder the claims of the petitioner have been rejected on the ground that petitioner has no prima-facie case for consideration.

5. Learned Senior Counsel for the petitioner submits that the petitioner was appointed as Panchayat Shiksha Mitra at Block Lakhanour and she was appointed in Madhya Vidyalaya, Deep (West), Block Lakhanour, Madhubani in the year 2005. She joined the said school on 06.06.2005 and her joining was accepted by the headmaster of the School on the same day.

6. It is stated that with coming into force of the Bihar Panchayat Elementary Teacher Employment and Service Condition Rules, 2006 (hereinafter referred to as the 'Service Rules') with effect from 01.07.2006 all the Panchayat Shiksha Mitras became Panchayat Teachers with effect from 01.07.2006. The petitioner became Prakhanda Shiksha Mitra and in this regard Letter No. 1076 V.E.P., of District Superintendent of Education,



Madhubani was issued. The petitioner claims that since then she was working as Block Teacher in the school and was performing her duty.

7. It is stated that at the time of appointment in the year 2005, petitioner had completed Madhyama (Matric), Upshastri (Inter) and Shastri (Graduation). She had appeared in Madhyama Examination held in the year 1998 as a regular candidate from Kusheshwar Pushpamaya Parasmani Sanskrit Middle School, Madhubani conducted by Bihar Sanskrit Shiksha Board. She passed the said examination in IInd Division and was granted certificate to this effect on 11.06.1990. It is stated that in the said certificate, her date of birth was mentioned as 10.03.1972 in Hindi numerical which in English has been assumed as 10.03.1962. It is submitted that because of this discrepancy, the petitioner has been placed in the category of those teachers who had obtained appointment by submitting forged certificate. She has been brought within the preview of the Vigilance and has been made accused in Lakhanour P.S. Case No. 289 of 2019 dated 23.11.2019 registered under Sections 420, 467, 468, 471, 120B of IPC. In the said case, the petitioner has obtained anticipatory bail and she is facing trial.

8. On various grounds, the impugned order of termination of the petitioner and recovery of salary has been



challenged. In paragraph '21' of the writ application, a specific statement has been made that prior to passing of the order of termination and recovery from the petitioner, she was not served with any notice to show cause and no opportunity of hearing was provided to the petitioner, therefore, the impugned order has been challenged on the ground of violation of principles of natural justice.

9. Learned Senior Counsel for the petitioner submits that during pendency of the writ application, Respondent Nos. 9 and 10 have considered the application of the petitioner submitted on 29.11.2019 to the Secretary of Bihar Sanskrit Shiksha Board for correction in her date of birth mentioned in the Madhyama Certificate.

10. It is the stand of the Board at this stage in the present case by filing an affidavit that usually the Board allows the students concerned to make any correction in the certificate within a year of publication of result, however, the petitioner has applied for correction after about 30 years but having said so, the Board has submitted that the relevant records available with the Board particularly the General Tabulation Register and Reserve Tabulation Register and the Admit Card, it appears that the date of birth of the petitioner was mentioned in the documents in Hindi numerical as 10.03.1972 which was mistaken as



10.03.1962.

11. It is the stand of the Board that it prima-facie appears to be a mistake on the part of the officials of the Board while entering the date of birth of the petitioner in the Tabulation Register of the Board as 10.03.1962 (in Hindi Numerical). The Board has, therefore, issued office order contained in Memo No. 1016 dated 12.09.2023 (Annexure- 'R-9/A') for necessary correction.

12. Learned counsel for the Board submits that in fact it appears on perusal of Annexure-2 (series) to the writ application that the petitioner had appeared in the Madhyama Examination in the year 1988. Her Admit Card shows her date of birth in Hindi numerical as 10.03.1972 but in the certificate of Madhyama Examination, her date of birth was mentioned as 10.03.1962 in Hindi. Same was the position with the School Leaving Certificate also but the petitioner did not apply for correction in accordance with the procedures available for that purpose. She seems to have herself overwritten the year and made 1962 (in Hindi) as 1972 (in Hindi).

13. Learned counsel, however, submits that the correct date of birth would be 10.03.1972.

14. Learned counsel for the State Respondent (Respondent No. 4) submits that it is evident from Annexure '2'



Series that there is an interpolation in respect of the year of birth of the petitioner in the certificate, therefore, she has been brought within the purview of the investigation and presently trial is pending. It is submitted that in such circumstance, she has rightly been removed from service and recovery has been ordered.

15. Learned counsel for the State is, however, unable to controvert the submissions of learned Senior Counsel for the petitioner that prior to passing of the impugned order of termination and recovery of the salary amount from the petitioner, no opportunity to show cause or defend herself was given to the petitioner.

16. Having regard to the facts of the case and submissions noted herein above, this Court is of the opinion that at this stage any observation with regard to the allegations made against the petitioner with regard to interpolation in the certificates would be detrimental to the defence of the petitioner in the criminal case, therefore, this Court would not go into that issue of interpolation.

17. The Court will only examine the decision making process and while doing that, there is no denial of the submission of the petitioner that before passing of the impugned orders of termination, no opportunity of hearing was given to the petitioner. She had no opportunity to explain as to why her



service be not terminated at this stage during pendency of the criminal case.

18. One thing that is evident from the record is that the respondents have assumed the guilt of the petitioner only because one FIR has been lodged against her and she has been subjected to investigation. This would not be the correct position in Law. An accusation or filing of charge sheet would not be a proof of guilt. The petitioner is already facing trial and the outcome of the trial would be an independent thing which need not be envisaged at this stage.

19. This Court is of the considered opinion that the impugned orders have been passed in violation of principles of natural justice. Prejudice has been caused to the petitioner because of non-observance of the principle of *Audi Alteram Partem*. In the case of **S.L. Kapoor Vs. Jagmohan and Ors.** reported in **(1980) 4 SCC 379**, the Hon'ble Supreme Court has observed that, in fact, non-service of notice in itself is a prejudice and it has further been held that the burden to prove that no prejudice has been caused to a person who challenges the action of the respondent on the ground of violation of principles of natural justice would be upon the other side who claims that no prejudice has been caused.

20. As this Court arrives on a conclusion that in this



case due to non-observance of principles of natural justice, prejudice has been caused to the petitioner, the impugned orders including the consequential orders are hereby set aside.

21. The respondent would be at liberty, however, to take steps afresh if so advised in accordance with Law and by following the principles of natural justice.

22. So far as the criminal case is concerned, let it be recorded that this Court has not made any observation with regard to the pendency of the said case and that would proceed independently.

23. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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