

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.986 of 2019

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Ashok Kumar Son of Late dev Narayan Jha, Resident of Village-Post Office-
Lakhpura, Police Station-Panjbara, Anchal-Barahat, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director (Secondary Education), Government of Bihar, Patna.
3. The Regional deputy Director of Education, Bhagalpur Commissioner, Bhagalpur.
4. The District Education Officer, Banka.
5. The District Program Officer (Establishment), Department of Education, Banka.
6. The In-charge Principal, Project Girls High School. Lakhpura, Barahat, District-Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashutosh Kumar

For the Respondent/s : Mr.Subash Chandra Mishra

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 5 04-12-2023 1. The petitioner was appointed in 1989 on Class IV post as Peon in the Project Girl's High School. The authorities came to know in 1997 that those appointments were made in breach of the statutory provision and contrary to the requirement of Articles 14 & 16 of the Constitution of India and after giving show cause to the petitioner his appointment was cancelled in 2002.
2. The petitioner approached this Court challenging



his termination in writ application bearing C.W.J.C. No. 12145 / 2002 which was dismissed by this Court. Being aggrieved by dismissal, the petitioner filed L.P.A. bearing L.P.A. No. 66 / 2003 which also got dismissed however while dismissing the L.P.A. a Division Bench of this Court observed that if vacancies are advertised, then the petitioner / appellant may also be given an opportunity to appear and in that selection process age bar may not be a ground to debar the petitioner and others from participating in the process of selection. The petitioner preferred S.L.P. against the order of the L.P.A. dated 30.01.2003 vide S.L.P. (Civil) No. 14438 / 2003 which also got dismissed on 26.07.2004.

3. After termination of the petitioner was confirmed up to the Supreme Court, the RDD allowed the petitioner to submit his joining on the same post without any process of law and this act of RDD was deprecated by superior authorities and ultimately the petitioner was removed again on 26.03.2008. The petitioner again approached this Court in C.W.J.C. No. 7113 of 2008 which was disposed with liberty to the petitioner to file appeal before the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna who passed the order on 23.09.2009 and being aggrieved by the same



the present writ application has been preferred by the petitioner.

4. Learned counsel for the petitioner submits that petitioner was reinstated by RDD vide Annexure- 7 and allowed to join on 13.12.2006. Learned counsel submits that while dismissing the L.P.A. No. 66/2003 filed by the petitioner this Court had given liberty to the petitioner to make application for appointment if vacancies are advertised and though vacancies were advertised, the petitioner was not considered for appointment. He further submits that some similarly situated persons have been allowed to continue in service whereas petitioner and others have been removed from service. The order of the appellate authority i.e. Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna has failed to consider these aspects of the matter. Accordingly, submission is that appellate order dated 23.09.2009 is not sustainable.

5. On the other hand, learned counsel for the State submits that the order of termination of the petitioner was passed in 2002 and the petitioner approached this Court in writ application, which was dismissed and L.P.A. preferred by him was also dismissed and S.L.P. also got dismissed. The issue regarding his termination travelled up to Hon'ble Supreme



Court however the petitioner with the help of RDD succeeded in joining the same post from where he was terminated. After this illegal act was detected by superior authorities, the Director, Secondary Education, Govt. of Bihar terminated the services of the petitioner in 2008. He next submits that with regard to contention of the petitioner that similarly situated persons have been allowed to continue in service, similar argument was advanced at the time of hearing of L.P.A. No. 66 of 2003 by the petitioner and the L.P.A. court has rejected this argument for the simple reason that this Court cannot issue a direction to the authorities to commit a mistake, which have been committed with regard to other persons. The appellate authority rightly dismissed the appeal filed by the petitioner on the ground that termination of the petitioner was upheld up to the Hon'ble Supreme Court.

6. Having heard learned counsel for the parties and after going through the materials on record it is evident that the termination of the petitioner was upheld up to Hon'ble Supreme Court. The petitioner has failed to bring on record any advertisement having been published after dismissal of L.P.A. No. 66 / 2003 in which petitioner was not considered by the authority. However this cannot be a ground for interference with



the order passed by appellate authority.

7. In view of the totality of facts, I do not find any merit in the present writ application. The same is dismissed.

(Anil Kumar Sinha, J)

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