

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1965 of 2022

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Arshad Ali S/o Md. Ali, Resident of Village-Barahi, P.S.-Bithan, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Education Department of, Govt. of Bihar Secretariat, Patna.
2. The Director (Primary Education), Education Department, Govt. of Bihar, New Secretariat, Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The District Education Officer, Khagaria.
5. The District Programme Officer (Establishment), Khagaria.
6. The Block Education Officer, Alouli, Khagaria.
7. The Block Development Officer, Alouli, Khagaria.
8. The Panchayat Secretary, Gram Panchayat Raj, Meghauna, Alouli, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Choudhary, Sr. Adv. Mr. Shashi Bhushan Kumar, Adv.
For the Respondent/s	:	Mr. Madanjeet Kumar (GP20)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :09-07-2024

Heard Mr. Basant Kumar Choudhary, learned
Senior Counsel for the petitioner assisted by Mr. Shashi
Bhushan Kumar, learned advocate, and Mr. Madanjeet Kumar,
learned counsel for the State.

2. The present writ petition has been filed seeking the
following reliefs:

*“(i) To direct the Respondent authority to pay the
arrears of salary as well as current salary to the
petitioner with effect from September 2019 to till
date.*

(ii) To quash memo no. 1398 dated 10.05.2024



issued by the District Programme Officer (Eatablishment), Khagari, whereby and whereunder in the light of State Appellate Authority order dated 06.05.2024 passed in Appeal no. 32/2023, a follow up order issued by which directed to the Panchayat Employment Unit to take action regarding removal from service to the petitioner and also direct the headmaster stopped, the attendance of the petitioner on attendance register with immediate effect. A copy of memo dated 10.05.2024 is annexed herewith and marked as Annexure-P/1 to this application.

(iii) To further direct the Respondent Authority not to disturb the Petitioner to discharging his duty as a Panchayat Teacher in Kanya Primary School Meghauna, Block Alouli under Khagaria District. And/or any other appropriate relief(s) to the petitioner for which he may be found entitle under the facts and circumstances of the case.”

3. Having heard learned counsel for the parties and for the reasons stated in the interlocutory application, the interlocutory application no. 02 of 2024 is allowed and the reliefs prayed in this interlocutory application shall also be treated as a part of the relief prayed in the main writ petition.

4. The petitioner's case, in short, is that he was appointed as Panchayat Teacher on 14.08.2010. Subsequently, he was transferred to another school in year 2014. A complaint was filed before Chairman, District Board alleging that Moulvi fokania and matriculation certificates of the petitioner had different dates of birth. The petitioner has asserted that this statement was totally incorrect and without proper verification or enquiry payment of his salary has been stopped since



September, 2019. Vide letter dated 09.09.2019. The authority recommended to the Employment Unit to take necessary action against petitioner. It is stated in impugned order passed by learned District Appellate Authority that petitioner never appeared and passed matriculation examination, rather matriculation certificate was of his elder brother Md. Arshad Ali, who has died in 2009 and regarding Bastania and Fokmania certificates correct date of birth had been mentioned in the admit card. But in certificates date of birth of petitioner has been wrongly mentioned as 05.02.1980. The petitioner approached Madrasa Board twice for a correction but no correction has been yet made.

5. Learned Senior Counsel for the petitioner submits that the petitioner was employed on 14.08.2010 by concerned Panchayat Secretary on the basis of Moulvi certificate equivalent to intermediate passed on 18.12.2007 from Bihar Madarsa Board, Patna. The petitioner passed Bastania degree equivalent to Class-VIII in 2003 with date of birth of 05.02.1990 and further passed Fokania degree equivalent to matriculation from Bihar Madarsa Board on 26.04.2005 with date of birth of 05.02.1990. These dates of birth were given on admit card but on the certificates of Bastania and Fokania which



are equivalent to class-VIII and matriculation respectively mentioned date of birth is 05.02.1980. The petitioner has passed Bastania examination in 2003. On admit card date of birth was rightly mentioned as 05.02.1990, but in marks sheet and certificate date of birth has wrongly been mentioned as 05.02.1980. The authority has stated that the matriculation certification of Md. Arshad Ali is in the name of the his elder brother and the petitioner has never appeared the matriculation examination. Md. Arshad Ali died on 10.12.2009 and a copy of death certificate has been enclosed as Annexure-4 of the writ petition.

6. Learned Senior Counsel for the petitioner further submits that a complaint was filed before Chairman, Zila Parishad with allegation that petitioner had obtained Fokania degree equivalent to matriculation from Madrsa Board and at the same time he also obtained matriculation degree from Bihar School Examination Board, Patna with different date of birth. After enquiry, a report was submitted that Md. Arsad Ali had passed Annual Secondary examination with second division in 2002 with a roll code of 06331, roll no. 0243 and a date of birth of 01.10.1984. Further, petitioner had passed Fokania examination (equivalent to matric) in 2005 with a roll code of



SAM, roll no. 0199 and date of birth of 15.02.1980 and, subsequently, passed moulvi examination equivalent to intermediate in 2007 with roll code of SAM, roll no. of 00062 and date of birth of 05.02.1990. He further submits that the authorities have verified all these details from the concerned boards with the conclusion that petitioner has dual certificate with different dates of birth. On the basis of this report, a direction was given to the concerned Panchayat Secretary to take necessary action but no action was taken, as a result of which the petitioner is still working as Panchayat Teacher.

7. After an enquiry, the authorities have directed the Panchayat Secretary to remove the petitioner from the service, against that order the petitioner approached before the District Appellate Authority, Khagaria and by a reasoned and speaking order, the District Appellate Authority, Khagaria passed an order in favour of the petitioner and directed the respondents to reinstate the petitioner within thirty days from the date of the order or its communication and allow to continue work as Teacher of concern school, if vide impugned order has been dismissed from service; The respondents are also directed to make payment of salary to the petitioner for the period of dismissal if any; and thereafter since the day of joining, and



onward as admissible. However, the petitioner is not entitled to get his salary from the date of dismissal if any, till the date of reinstate on joining on the principle of no work no pay but the period in between the termination and reinstatement on joining shall be treated to be “no breakage of service”. Against this order the authorities have filed appeal before the State Appellate Authority. Thereafter, The authorities have also filed a review petition before the District Appellate Authority in respect of impugned order passed by the District Appellate Authority. In light of orders of this Authority given on 17.08.2023, the authority withdrew this review application on 12.09.2023.

8. Having heard the submissions advanced on behalf of the parties and from perusal of the records, it appears that in the orders of the District Appellate Authority and the State Appellate Authority the petitioner has enclosed a copy of application and he claims to have submitted to Secretary, Bihar, Madrasa Board with a request to change his date of birth to 05.02.1990 in place of 05.02.1980. It carries an endorsement made by Principal on 30.10.2008. But the handwriting of Principal appears to be prima facie same as the petitioner. Thus, the Authority cannot place any reliance upon that application. Besides, if the said certificate was issued in 2003 an application



for correction submitted after 05 years carries no meaning. There is a limitation for submission of such applications and if an application is submitted after expiry of this period it cannot be entertained. The District Appellate Authority further held that Md. Arshad Ali died on 10.12.2009 and a copy of date certificate has been enclosed with the appeal petition. From perusal of that certificate it appears that though death is said to have taken place on 10.12.2009, it had been registered on 09.11.2019 which was after a lapse of nearly 10 years after death. After that genealogy of family of petitioner issued by Circle Officer, Bithan, has been enclosed which shows that one Md. Ali was deceased elder son while Arshad Ali was younger son. It contains name of a third son Md. Anzar Ali. Further, it is also admitted fact that the petitioner had passed two matriculation level examination with different date of birth. His date of birth as recorded in certificates is also different from his admit card and he had been appointed fraudulently on the basis of a wrong date of birth which was ten years less than his certificate date of birth.

9. Considering the facts and circumstances of the case, it is admitted fact that there are two different date of birth and disputed fact cannot be decided under Article 226 of the



Constitution of India and it also appears that Civil Court is the competent Court and the State Appellate Authority has rightly passed the order.

10. Accordingly, the present writ petition stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	27.06.2024
Uploading Date	09.07.2024
Transmission Date	NA

