

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5084 of 2023

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Lusi Devi, D/o-Late Hari Kishore Jha, R/o-Village-Mishrapur, Post-Kumaitha, P.S.-Bath, District-Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Bihar, Patna.
3. The District Compassionate Committee through its Chairman, Muzaffarpur.
4. The District Magistrate, Muzaffarpur.
5. The Deputy Collector, Establishment, Muzaffarpur.
6. The Superintending Engineer, Irrigation Mechanical Circle, Muzaffarpur.
7. The Executive Engineer, Irrigation Mechanical Division, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Roona, Advocate
For the Respondent/s : Mr.Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 29-07-2024 This is second round of litigation at the instance of the petitioner for compassionate appointment in place of her father, who died on 26th of December, 2011, while in service, leaving behind his widow and the petitioner as his only daughter. After the death of her father, the petitioner applied for compassionate appointment on 19th of May, 2015, along with all necessary documents, including the certificate issued by Hindi Vidyapith, Deoghar, which was equivalent to Secondary School 10th Examination. It is not in dispute that, as per the certificate issued by Hindi Vidyapith, Deoghar, the petitioner passed her



matriculation examination in the year 2013. Her prayer for compassionate appointment was placed before the committee on 2nd of February, 2016 and she was found eligible to be appointed in the Class-IV as a Peon in grade pay of Rs. 1800/-. After her date of selection and actual appointment, the General Administration Department issued a notification bearing no. 5267 dated 8th of April, 2016, holding, inter alia, that the certificate issued by Hindi Vidyapith, Deoghar, would be treated to be invalid. Therefore, the petitioner was not allowed to join her post on compassionate ground as she passed her matriculation examination from Hindi Vidyapith, Deoghar, certificates of which were declared invalid.

2. It is submitted by the learned Advocate on behalf of the petitioner that the State Government sought for opinion of the learned Advocate General with regard to the effect of notification dated 8th of April, 2016 in respect of candidates who had already passed from the said institution before the notification dated 8th of April, 2016 having been issued.

3. The learned Advocate General submitted his valid opinion to the General Administration Department which reads as under:-

“Thus, in my opinion, the clause



simply means that appointments/promotion, made/given on the basis of the certificate issued by Hindi Vidyapith, Deoghar prior to 7th of May, 2012 until issuance of the notification by General Administration Department dated 8th of April, 2016 shall not be affected”

4. On the basis of the said opinion of the learned Advocate General of the State, the General Administration Department again issued a corrigendum dated 24th of August, 2017, stating as under:-

"अतः सम्यक् विचारोपरांत स्पष्ट किया जाता है कि "हिन्दी विद्यापीठ, देवघर द्वारा दिनांक- 07. 05. 2012 से पूर्व प्रदत्त उपाधियों के आधार पर दिनांक 07. 05. 2012 से अधिसूचना ज्ञापांक- 5267 दिनांक - 08. 04. 2016 निर्गत होने के बीच (अर्थात् दिनांक 08. 04. 2016 तक) की गयी नियुक्ति / प्रोन्नति उक्त अधिसूचना से अप्रभावित रहेगी। परन्तु दिनांक 08. 04. 2016 के पश्चात् उक्त उपाधियों के आधार पर कोई नियुक्ति / प्रोन्नति नहीं की जा सकेगी।"

5. Further case of the petitioner that in the meantime the petitioner passed matriculation examination again from Bihar Board of Open Schooling and Examination in the year 2017. She submitted a representation before the concerned department. However, the department rejected the prayer of the petitioner. Thereafter, petitioner filed C.W.J.C. No. 9337 of 2019, praying for a direction upon the respondents to permit her



to join as per order dated 2nd of February, 2016. A Coordinate Bench of this Court disposed of the said writ petition with liberty to the petitioner to approach the appropriate authority for her grievances. On the basis of the said direction passed by this Court in the aforesaid writ petition, she made an elaborate representation before the Board. However, her representation was again rejected on the ground that she had no academic qualification on the date of her appointment, i.e., on 2nd of February, 2016.

6. Challenging the said order, the petitioner has approached this Court for appropriate writ/direction/order.

7. Learned Advocate on behalf of the petitioner laid stress on the opinion of the learned Advocate General, State of Bihar, on the basis of which the General Administration Department issued order dated 24th of August, 2017. It is contended on behalf of the learned Advocate for the petitioner that on 2nd of February, 2016, she was selected. However, she could not join before 8th of April, 2016. She passed her 10th matriculation examination from Hindi Vidyapith, Deoghar, in the year 2013. At that point of time, there was no notification dated 8th of April, 2016. Therefore, the said notification cannot



be given any retrospective effect. From the opinion of the learned Advocate General, it is also appeared that the notification dated 8th of April, 2016 shall have prospective effect only. The persons who passed before issuance of the notification, their appointment cannot be reversed on the ground of subsequent declaration of Hindi Vidyapith, Deoghar, to be a fake institution.

8. Learned Advocate on behalf of the respondents, on the other hand, has drawn my attention on paragraph nos. 8, 9 and 17 of the counter affidavit.

9. In paragraph no. 8, it is contended by the learned Advocate for the respondents that by virtue of notification dated 8th of April, 2016, it was directed that the candidate who passed 10th matriculation examination from Hindi Vidyapith, Deoghar, after 7th of May, 2012 ought not to be validated. The petitioner admittedly passed her 10th matriculation examination from Hindi Vidyapith, Deoghar, in the year 2013. Accordingly, her academic certificate cannot be considered in the instant case.

10. It is also contended by the learned Advocate for the respondents that the opinion of the learned Advocate General has been misconstrued by the petitioner. Learned Advocate on behalf of the respondents further submits that the



petitioner subsequently passed Secondary Examination on 31st of August, 2017 from the Bihar Board of Open School Examination. Since the petitioner attained academic qualification required for the post of Group D employee after a lapse of 5 years of her father's death, the said certificate dated 31st of August, 2017 can also not be considered to adjudicate as to whether the petitioner is entitled to join in the Water Resources Department as Class-IV Staff.

11. Having heard the learned Advocates for the parties and on careful perusal of the entire materials on record, this Court is of the view that Annexure-3, being a notification dated 24th of August, 2017, is the relevant document to ascertain as to whether the Administrative Department acted illegally and arbitrarily in violation of Articles 14 and 16 of the Constitution of India.

12. The said notification clearly states that the appointment/promotion made/given on the basis of certificates issued by Hindi Vidyapith, Deoghar, prior to 7th of May, 2012, until the issuance of the notification by the General Administration Department dated 8th of April, 2016 shall not be affected. Thus, the certificates issued by Hindi Vidyapith, Deoghar, prior to 7th of May, 2012 was saved and



appointment/promotion on the basis of those certificates issued by Hindi Vidyapith, Deoghar, prior to 7th of May, 2012 would not be vitiated by the notification issued by the General Administration Department on 8th of April, 2016.

13. It is unfortunate to note that the petitioner obtained her Class 10th passed certificate in the year 2013 i.e., after 7th of May, 2012. Therefore, in my considered opinion, she come within the clutches of the notification dated 8th of April, 2016.

14. Therefore, I do not find any fault in decision of the General Administration Department.

15. The writ petition is, accordingly, dismissed.

16. However, there shall no order as to costs.

(Bibek Chaudhuri, J)

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