

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7031 of 2015

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Murlidhar Sharma S/o Ramnandan Sharma Resident of Village - Vijaypara,
P.S. - Dhanarua, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Patna.
3. The District Education Officer, Patna.
4. The District Programme Officer, Establishment, Patna.
5. The Principal, Anugrah Narain College, Patna, P.S.- Sri Krishnapuri, Distt.- Patna
6. The Headmaster, Kanya Middle School, Virchand Patel, Lohiya Nagar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Ms. Shally Kumari, Advocate

For the Respondent/State: Mr. Braj Bhushan Mishra, A.C. to AAG-9

For the Respondent no.5 : Dr. Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

- 8 01-02-2024 1. Heard learned counsel for the petitioner and learned
counsel for the respondents.
2. The petitioner has filed the instant application for
the following relief(s):

*“(1) For issuance of an appropriate writ
in quashing Memo No. 47 dated 04.01.2014 passed
by District Programme Officer (Establishment),
Patna whereby a claim of the petitioner for
promotion to the post of Headmaster has been*



rejected, contained in Annexure-10.

(ii) For issuance of an appropriate writ commanding the respondents to grant promotion to the petitioner having requisite qualification to the post of Headmaster w.e.f. 01.04.1993 the date on which the juniors of the petitioner have been promoted with all consequential benefits.

(ii) For any other relief of reliefs for which the petitioner is entitled under law as well as on facts of the case.”

3. The case of the petitioner is that he was appointed in the year 1977 as an Assistant Science Teacher against I.Sc. trained scale. He gave his joining in Middle School, Imamganj in the district of Patna. Having been granted departmental permission by the District Superintendent of Education, Patna by order dated 30.6.1989 (Annexure-2), the petitioner passed the B.Sc. examination in the year 1990. He was promoted to the graduate trained scale by order dated 17.7.1995 w.e.f. 1.4.1991. By order dated 1.8.1991, issued under the signature of the District Superintendent of Education, Patna, the petitioner was granted permission to appear in the post graduate examination where he appeared in the examination held in November, 1994. The relevant certificate dated 9.2.1995 issued by the Magadh University has been brought on record as Annexure-6 to the writ application.

4. Learned counsel for the petitioner submits that not having been granted promotion, though persons junior to the



petitioner were granted promotion, the petitioner moved this Court in CWJC no.6665 of 2000 which was disposed of by order dated 5.1.2007 (Annexure-8) with a direction to the respondent no.4 therein to ensure that final decision is taken in light of the allegations made in the writ petition and communicated to the petitioners within a period of four months. The writ application was followed by contempt application being filed by the petitioner which was registered as MJC no.1636 of 2007. During pendency of the contempt application, the order impugned contained in Memo no.47 dated 4.1.2014 (Annexure-10) having been passed, the contempt application was disposed of by order dated 8.1.2014 (Annexure-9). Learned counsel for the petitioner submits that by the order impugned dated 4.1.2014, the District Programme Officer (Establishment), Patna rejected the representation of the petitioner and held the non-inclusion of the petitioner's name in the final seniority list of Headmasters to be correct on the ground that he had obtained his masters degree as a regular candidate without taking leave from his work. Learned counsel referring to the contents of the order dated 4.1.2014 as also the counter affidavits filed on behalf of the respondents submits that against the petitioner having obtained his masters degree in the year 1995, the



respondents are relying on the guidelines issued by the Director, Primary Education in his letter dated 4.1.2010 which cannot have any retrospective application. It is thus submitted that the order impugned is unsustainable, be set aside and the writ application be allowed with consequential benefits.

5. Learned counsel appearing for the respondents submits that the order under challenge dated 4.1.2014 is a well reasoned order. The petitioner while working as a teacher, did not obtain leave for pursuing his higher studies and obtained his masters degree. Clause (2) of the letter dated 4.1.2010 (Annexure-14) of the Director, Primary Education clearly provides that any person, who while working in school and having obtained salary, pursues and obtains his degree from a college as a regular candidate, such degree shall be considered illegal. It is thus submitted that there is no merit in the writ application and the same be dismissed.

6. Having heard learned counsel for the parties and having perused the material on record, this Court finds that it is not in dispute that the petitioner joined service as an Assistant Science Teacher in the year 1977. It is also not in dispute that he was granted permission by order dated 30.6.1989 (Annexure-2) to appear in the B.Sc. examination and by order dated 1.8.1991



(Annexure-5) to sit in the examination for his masters degree. Both the permissions have been granted by the District Superintendent of Education, Patna and the authenticity of the same has not been challenged by the respondents in their counter affidavit. Further, this Court finds substance in the submissions made on behalf of the petitioner to the effect that the petitioner having pursued his B.Sc. and masters degree having sat in the examination after due permission from the respondents and having obtained even his masters degree as far back as in the year 1995, the respondents cannot rely upon the contents/directions/guidelines issued in the letter dated 4.1.2010 issued by the Director, Primary Education as the same would not have any retrospective application.

7. In view of the facts and circumstances of the case, this Court finds that the order impugned dated 4.1.2014 (Annexure-10) is not sustainable and is fit to be set aside. The order contained in Memo no.47 Patna dated 4.1.2014 issued by the District Programme Officer (Establishment), Patna is hereby quashed. The petitioner shall be granted promotion from the date his juniors were granted promotion to the post of Headmaster with all consequential benefits. Consequential steps will be taken by the respondents within a period of four months



from the date of receipt/production of a copy of this order.

8. The writ application stands allowed.

(Partha Sarthy, J)

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