

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8560 of 2016

Narendra Nath Bhattacharya Son of Bhabani Charan Bhattacharya Resident of Mohalla Ram Nagar, Sabadal Road, P.S. Civil Lines in the District of Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The District Education Officer, Gaya.
5. The Vidyalay Seva Board, Patna through its Secretary.
6. The Secretary, Vidyalay Seva Board, Patna.
7. The Secretary, Managing Committee, Haridas Seminary, Gaya
8. The Principal, Haridas Seminary, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Braj Nandan Kumar Tiwary
For the Respondent/s	:	Mr. Sitaram Yadav (Gp16)
	:	Mr. Yatindra Narayan (Ac to Gp16)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 8 29-07-2024 1. Heard learned senior counsel for the petitioner and the State.
2. The present writ application has been filed for quashing the order as contained in Memo No. 53 dated 17.01.2014, whereby the Director, Secondary Education, Bihar, Patna, has refused the approval of the appointment of the petitioner as Assistant Teacher in Haridas Seminary, Gaya, which is a linguistic minority aided Education Institution.
3. Learned senior counsel for the petitioner submits that the Managing Committee and the Board of Trustees of the aforesaid minority institution, by its resolution dated 3rd July, 1976, resolved to appoint the petitioner as a Bengali Teacher against the permanent vacancy with effect from 5th



July, 1976. Since 1976, the petitioner continued to discharge his duties as a teacher. The petitioner, in order to get training, was relieved by the Managing Committee of the school and was granted leave to enable the petitioner to join the training college at Kolkata for two years. The Managing Committee sanctioned the leave of the petitioner for training *vide* resolution, dated 25.01.1980, and resolved that the period of study at the training college shall be deemed as extraordinary leave.

4. The petitioner, after completion of his training on 01.06.1982, started working and the period between 28.06.1980 to 01.06.1982 was considered as extraordinary leave by the Managing Committee. The result of training was declared on 18.06.1982. The Managing Committee of the institution, by its resolution, dated 22.05.1983, approved the appointment of the petitioner as a trained graduate teacher with effect from the date of passing of the training i.e., 18.06.1982. It was also resolved that necessary steps shall be taken by the Committee to fix the scale of pay as trained graduate teacher with effect from 18.06.1982 and decided to move the department to regularize his appointment and fix the scale of pay as trained graduate Assistant Teacher with effect from 18.06.1982.



5. The petitioner filed a supplementary affidavit stating that pursuant to the recommendation of the Managing Committee, the District Education Officer, Gaya, by his Memo No. 9603-07, Gaya, dated 11.08.1984 fixed the pay of the petitioner at Rs. 850/- in the scale of Rs. 850-1200/EB-30-1360 with effect from 18.06.1982.

6. Learned senior counsel submits that the typed copy of the aforesaid letter has been brought on record as *Annexure 6* to the writ application having the date of 11th August, 1983, but during the course of argument, it was pointed out that typed copy of the letter has been annexed with the writ application and not the original copy, accordingly, the supplementary affidavit has been filed bringing on record the photocopy of the original and upon perusal, it appears that letter, in question, is not dated 11.08.1983 but the same is dated 11.08.1984.

7. In the year 2002, the salary of the petitioner was stopped without assigning any reason which led to the filing of the writ application by the petitioner bearing C.W.J.C. No. 9806 of 2004. The writ application was disposed by order, dated 09.02.2005. This Court directed the Director, Secondary Education, to take a decision on the representation of the petitioner within a stipulated time. The representation of the



petitioner was rejected by the Director, Secondary Education, on the ground that the appointment of the petitioner is not approved by the Vidyalaya Seva Board, as such, the stoppage of salary of the petitioner could not be said to be irregular. The aforesaid rejection, dated 20.06.2007, was again challenged by the petitioner in C.W.J.C. No. 19070 of 2008 which was disposed *vide* order, dated 26.04.2012, with a direction to the Director, Secondary Education, to take a fresh decision by considering the case of approval of services of the petitioner.

8. The petitioner, in compliance of the aforesaid order, filed a detailed representation before the Director, Secondary Education, along with the relevant documents but the same has been rejected by the Director, Secondary Education, Bihar, Patna, *vide* order, dated 17.01.2014, primarily on the ground that in the appointment of the petitioner, the procedure was not followed and the petitioner as well as the Managing Committee of the school failed to produce the letter bearing no. 50, dated 08.02.1983, regarding approval of the appointment of the petitioner by Vidyalaya Seva Board.

9. It has been submitted that, way back in 1984, the



petitioner's appointment as a trained teacher was approved by the competent body with effect from 18.06.1982 and petitioner continued to receive the salary on the scale meant for trained teacher for about twenty years. After twenty years of service, abruptly the salary of the petitioner was stopped and ultimately the representation of the petitioner has been dismissed on a frivolous ground that the procedure was not followed at the time of petitioner's appointment.

10. Learned senior counsel next submits that advertisement was duly published in the English Newspaper 'Indian Nation' on 5th February, 1983 by the Managing Committee for appointment of trained Assistant Teacher in the prescribed scale of pay in the subject of History along with other subjects. The qualification prescribed, as per the advertisement, was trained B.A., B.Sc. Honors. Admittedly, the petitioner completed his training on 18.06.1982. After the advertisement published on 05.02.1983, the Managing Committee of the School headed by the District Magistrate being the *ex-officio* Chairman of the Managing Committee took a resolution on 22.05.1983 to appoint the petitioner as a trained teacher with effect from the date of publication of result of training of the petitioner i.e., 18.06.1982.

11. On the other hand, learned counsel for the State argued



that this Court while disposing the C.W.J.C. No. 19070 of 2008 on 26.04.2012 directed the Managing Committee of the school and also the petitioner to file the requisite papers including the letter no. 50 dated 08.02.1983 of the Secretary, Vidyalaya Seva Board, giving approval of service of the petitioner which has not been produced before the Director Secondary Education, as would be reflected in the impugned order.

12. Learned counsel further submits that procedure for appointment of the petitioner has not been followed and other candidates were not called for interview as well as the name of the members of the Selection Committee has also not been disclosed.

13. Upon hearing the rival submissions of the parties, the fact which emerges is that petitioner was appointed in 1976 by the Managing Committee of the Linguistic Minority School. The petitioner, subsequently, went on extraordinary leave for completion of his training and completed his training on 18.06.1982. After completion of training, he again submitted his joining in the school which was accepted. In the meanwhile, in February, 1983, advertisement was published by the school for appointment of trained teachers in History and many other subjects



including the appointment of non-teaching staffs which would be evident from the copy of the advertisement brought on record by the petitioner.

14. The appointment of the petitioner after advertisement was approved by the resolution of the Managing Committee headed by the District Magistrate on 22.05.1983. After approval of the appointment of the petitioner, by the Vidyalaya Seva Board, Patna, *vide* letter no. 50, dated 08.02.1983, the petitioner was granted regular scale by the District Education Officer, Gaya, *vide* office order, dated 11.08.1984. The office order, dated 11.08.1984, clearly states that the approval of the petitioner in minority school with effect from 18.06.1982 was granted by the Secretary, Vidyalaya Seva Board, Patna, *vide* letter no. 50, dated 08.02.1983, in terms of the circular of the Government. The letter number and the date of the letter granting approval is mentioned in the office order dated 11.08.1984. The reference of the letter dated 08.02.1983 in the office order of Education Department cannot be disbelieved merely because the petitioner could not produce the copy of this letter before the Director, Secondary Education. The petitioner has brought on record copy of the original letter of the District Education Officer, dated 11.08.1984, on



record by way of supplementary affidavit having reference to the letter no. 50, dated 08.02.1983. Furthermore, it appears that advertisement was published for appointment of trained teacher and the petitioner having qualification for appointment as a trained Assistant Teacher was re-appointed from the date of completion of his training i.e., 18.06.1982 and started getting his regular salary fixed by the Government.

15. After a lapse of so many years, the ground of non payment of salary to the petitioner that the procedure was not followed for his appointment at the beginning and no other candidates participated along with the petitioner is nothing but a lame excuse by the respondent/authorities to deny the legitimate claim of the petitioner for salary. According to the petitioner, the petitioner discharged his duty as a Teacher without any break till his retirement i.e., 31.08.2014.

16. Taking into consideration the conspectus of facts discussed hereinabove, I come to the conclusion that denial of salary to the petitioner on the grounds that petitioner failed to produce the approval letter and further the procedure was not followed are without any basis and is completely arbitrary, unreasonable and malafide.



17. In the result, this writ application is allowed. The impugned order as contained in Memo No. 53 dated 17.01.2014 is set aside. The respondents are directed to pay the salary along with all consequential benefits to the petitioner from March, 2002, till his date of retirement i.e., 31.08.2014 within a period of three months from the date of receipt/production of a copy of this order.

(Anil Kumar Sinha, J)

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