

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10836 of 2015

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1. Laliteshwar Prasad, Son of Late Bahadur Mandal, resident of Village- Bela, P.O. Lokha, P.S.- Supaul, District- Saharsa.
 2. Tribhuwan Narayan Sah, Son of Shri Khushi Lal Sah, Resident of Village- Sundarpur, P.O.- Veena, Via- Supaul, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Secretary Primary Education, Government of Bihar.
3. The Director Primary Education Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Koshi Commissionary Saharsa.
5. The Collector, Supaul.
6. The District Superintendent of Education, Supaul.
7. The District Superntendent of Education, Saharsa.
8. The Block Education Officers, Supaul.
9. The Head Master of Kanya Middle School, Dharnipatti, Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjit Jha, Advocate
For the Respondent/s : Mr. Sanjay Kumar, AC to SC-15

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 23-02-2024

1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The petitioners have filed the instant application for the following relief(s):-

“1. i. For issuance of an appropriate writ order or direction or directions in nature of "certiorari" to quash memo No. 535/Patna dated 18.05.2015 passed by the Principal Secretary, Education Department, Government of Bihar (Annexure-14)



which is the Similar to the impugned order dated 11.03.2013 of Director Primary Education, Government of Bihar Annexure-12 of the writ petition without going to the perusal of the available records.

ii. For issuance of an appropriate writ, order/ direction in the nature of "Mandamus" directing and commanding to the concern respondents to consider the claim of petitioners in accordance to the Pvt. School Takeover Rules, 1976 after the proper verification the entire records available in the office of the concern authorities.

iii. For further issuance of an appropriate writ, order/direction in nature of "Mandamus" directing and commanding the concern respondents authorities to make their payment of entire salary alongwith arrears and all retirement benefits like the other teachers of the said school whose service were absorbed by the Government of Bihar from the date of the takeover of the said school.

iv. For any other relief or reliefs to which the petitioner found entitled to may kindly be allow to the petitioner in the end of justice."

3. The case of the petitioners in brief is that they were appointed in the year 1970 by the Managing Committee of the school. Subsequently, the school was taken over by the Government in the year 1981. Both the petitioners had passed the *Praveshika* Examination which is equivalent to



Intermediate, with the subject English. In spite of various communications between the respondent authorities and enquiries having been conducted, as no decision was taken nor any order passed approving the service of the petitioners, the petitioners moved this Court in CWJC no. 6216 of 2002 which was disposed of by order dated 27.3.2012 giving liberty to the petitioners to file a representation before the Director, Primary Education who was to pass a final order within a period of six months.

4. The petitioners moved before the respondents as directed and the Director, Primary Education by his order dated 11.3.2013 was pleased to reject the petitioners' application. The petitioners once again moved this Court by filing CWJC no. 10058 of 2013 which was disposed of by order dated 5.8.2014 granting the petitioners' opportunity to move before the Principal Secretary of the Department who was to consider the representation of the petitioners and to pass final orders expeditiously. The Principal Secretary, Education Department by his order dated 18.5.2015 (Annexure-14) was pleased to reject the representation of the petitioners observing that the name of the petitioners did not figure in the list of 40 teachers as contained in letter no.3072 dated 8.12.1992 nor in the list of 18



teachers as contained in letter dated 13.5.1995. It is against this order that the instant writ application has been preferred.

5. Learned counsel for the respondents opposes the prayer made in the writ application. It is submitted that so far as the petitioners are concerned, from the contents of the writ petition it would be evident that the petitioners claimed to be appointed sometime in the year 1970. All the communications brought on record by the petitioners are of the year 1986 or prior thereto. It was for the first time that the petitioners moved this Court by filing a writ petition only in the year 2002 on which the matter was sent back to be decided by the respondents vide order dated 27.3.2012. However it was made clear even in the said order that in case a decision is taken for absorption of the petitioners in service, they will not get any other benefit for their past service from 1981 nor would they be entitled for arrears of their salary. Learned counsel submits that no appeal having been preferred against the said order, this part of the order also attained finality. It is further submitted that on the order dated 11.3.2013 having been passed by the Director, Primary Education, the petitioners once again moved this Court in CWJC no.10058 of 2013 which was disposed of on 5.8.2014 giving an opportunity to the petitioners to move before the



Principal Secretary. By the order impugned dated 18.5.2015, the Principal Secretary has rejected the representation/application filed by the petitioners against which the instant application has been preferred. There is no illegality in the orders impugned. There being no merit in the writ application, the same be dismissed.

6. Having heard learned counsel for the petitioners, learned counsel for the respondents and having perused the material on record, it transpires that as per the case of the petitioners, they were appointed in the year 1970 by the Managing Committee of the School. The school was taken by the Government of Bihar vide notification dated 10.11.1981. The letter dated 10.11.1981 of the Special Secretary, Education Department, Government of Bihar shows that a report with respect to these two petitioners was asked for from the District Superintendent of Education, Saharsa which he submitted by his letter dated 21.10.1982. However a perusal of a letter dated 25.8.1983 of the Deputy Director of Education written to the Regional Director of Education, Kosi Division, Saharsa would show that there still remained teachers in the school in question whose services had not been approved. A report was called for which was submitted by the Sub-Inspector of School, Supaul by



his letter dated 26.5.1986 wherein both the petitioners find mention.

7. On the services of the petitioners not being approved, they moved this Court in CWJC no. 6216 of 2002 which was disposed of by order dated 27.3.2012 giving liberty to the petitioners to file their representation before the Director, Primary Education who was to examine the matter and pass final order within six months of the receipt of the representation. It was further held in the order dated 27.3.2012 that the petitioners would not get any other benefit for their past service from 1981 nor would they be entitled for arrears of salary. Relevant portion of the order dated 27.3.2012 is quoted herein below for ready reference:-

“.... .. In that view of the matter, this Court would give liberty to the petitioners to file their self contained representation along with a copy of this order before the Director Primary Education, who thereafter will examine the matter and pass a final order within six months of the date of receipt of the representation of the petitioner. If the Director would find that government decision as with regard to the petitioners taking over had already been taken, either accepting or rejecting it, he would communicate the same to the petitioners. In the event, it would be found by him that no such final decision as with regard to the takeover of



service of the petitioners has been taken as yet, he will take necessary steps for obtaining the Government order in terms of the statements made in the letter of the Special Secretary dated 10.11.1981.

It is however made clear that even, if, a decision is now taken for absorption of the petitioners in service, they will not get any other benefit for their past service from 1981 nor would not be entitled for arrears of their salary and their such salary would be paid w.e.f the Government would issue such an order in their favour.”

8. On examination, the case of the petitioners did not find favour and was rejected by the Director, Primary Education, Bihar by his order dated 11.3.2013. The petitioners moved this Court in CWJC no.10058 of 2013. On the prayer by learned counsel appearing for the petitioners that he be allowed opportunity to submit their representation enclosing documents, the application was disposed of by order dated 5.8.2014 granting opportunity to the petitioners to produce documents in respect of their cases which the Principal Secretary was required to consider before passing final orders. The order dated 5.8.2014 disposing of CWJC no. 10058 of 2013 is extracted herein below:-

“Learned counsel for the petitioners



submits that some documents has been submitted by the authorities of the Department before the Principal Secretary and the Principal Secretary is likely to consider the cases of the petitioners. He submits that the petitioners should be allowed opportunity to submit their own representation with enclosing documents in respect of their cases.

This opportunity is granted to the petitioners. In case the petitioners produce some documents in respect of their cases the Principal Secretary shall consider the same also before passing final orders as expeditiously as possible.

This writ application is disposed of with the aforesaid observations and directions.”

9. By order dated 18.5.2015, the Principal Secretary, Education Department rejected the representation of the petitioners. On perusal of the order, it transpires that a letter bearing no.3072 dated 8.12.1992 was written by the Secretary, Human Resources Development Department, Bihar, Patna to the District Magistrate, Saharsa. The same has been brought on record as Annexure- R/1 to the supplementary counter affidavit of respondent no. 3. It provides the conditions for eligibility for appointment as a teacher. It further transpires that a list of 40 teachers was sent along with an order contained in memo no.335 (Annexure R/1 to the supplementary counter affidavit of respondent no.7) dated 8.2.1994 issued under the signature of



the Deputy Secretary, Primary Secondary and Public Education Department, Government of Bihar. The said list was of the teachers who fulfilled the condition in the letter no.3072 dated 8.12.1992 and were working in the Government Primary and Secondary Schools. Further another letter bearing no. 720-2 dated 13.5.1995 was written by the District Magistrate, Supaul to the District Superintendent of Education, Saharsa, Supaul enclosing with the same a further list of 18 teachers posted in Primary and Secondary Schools who fulfilled the conditions/eligibility as required in letter no.3072 dated 8.12.1992.

10. The Principal Secretary, Education Department by his letter/order contained in memo no.535 Patna dated 18.5.2015 took note of the letter dated 8.12.1992 as also the two lists of 40 and 18 teachers enclosed with the orders/letters dated 8.2.1994 and 13.5.1995 to conclude that the names of the two petitioners not figuring in any of the two lists, the petitioners were not working in the school at the relevant time.

11. It would also be relevant to take note of the fact that though the names of the petitioners did not figure in the lists sent as far back as in the year 1994 and 1995, even for the first time the petitioners chose to move this Court by filing writ



application only in the year 2002.

12. Taking into consideration all the relevant documents as discussed herein above, the Principal Secretary, Education Department by order impugned contained in memo no.535 dated 18.5.2015 rejected the petitioners representation.

13. The Court finds no any error nor any illegality in the order impugned and no merit in the instant writ application.

14. The application is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	23.02.2024.
Transmission Date	N/A

