

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2140 of 2021

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Chandrashekhar Singh S/o Ram Nigahi Singh R/o Village Titira, P.S. Bhatha,
Distt- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, State of Bihar, Patna.
3. The Principle Secretary, General Administrative Department, Bihar, Patna.
4. The Director, Mass Education, Education Department, Bihar, Patna.
5. The Director (Janshiksha) Education Department, Bihar, Patna.
6. The District Magistrate, Muzaffarpur.
7. The District Transport Officer, Muzaffarpur.
8. The District Education Officer, Muzaffarpur.
9. The District Programme Officer, (Establishment), Muzaffarpur.
10. The District Program Officer, (Literacy), Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Chaudhary, Sr. Advocate Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s	:	Mr. Nadim Seraj, GP-5 Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 28-02-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The petitioner has prayed for following reliefs:

“(i) To quash the Memo No. 1710 dated 06.11.2020 issued by the director Jan Shiksha Cum Additional Secretary Education Department, Bihar, Patna whereby and where under the appointment of the petitioner has been cancelled on the ground he was not working as an instructor continuously three years on the basis of his payment and also direct the authority to recover the paid salary. A copy of memo dated 06.11.2020 is



annexed herewith and marked as Annexure – I to this application.

(ii) To further direct the respondent authority not disturb the petitioner in his discharging duty as a Group – D post in Rajkiyakrit Secondary/Higher Secondary School, Kharauna, Block- Kudhani, Muzaffarpur.

And or any other appropriate relief(s) to the petitioners for which they may be found entitled under the fact and circumstances of the case.”

3. Petitioner was initially appointed on *ad hoc* basis, thereafter, by virtue of judicial pronouncement cited in Annexures- 5 and 6 among others petitioner services were regularized while imposing various conditions. One of the condition is relating to filing of an affidavit that he has worked for continuous three years. The official respondent received complaint against the petitioner stating that the petitioner has not fulfilled the relevant condition imposed in the order of regularization to the extent that he has not completed three years of service, therefore, the affidavit filed by the petitioner is contrary to factual aspect of the matter. Thus, respondents have proceeded to cancel the regularization insofar as petitioner is concerned. Therefore, the present writ petition is filed.

4. Learned counsel for the petitioner submits that once the petitioner is regular holder of the post pursuant to Annexures-5 and 6, the respondents cannot cancel the regularization order without providing an opportunity. It is



further submitted that such termination or cancellation of regularization is on account of complaint against the petitioner that petitioner has filed false affidavit. In such an event, departmental enquiry is warranted. On this ground the impugned order is liable to set aside.

5. Learned counsel for the respondent filed a detailed counter affidavit stating therein that when the authorities have received the complaint against the petitioner, a show cause bearing Letter No. 2664 dated 14.11.2019 was issued against the petitioner. In pursuance of the aforesaid the petitioner submitted his reply, enclosing the experience certificate as well as evidence of payment made to him. He further submits that the documents submitted by the petitioner was forwarded to the District Education Officer, Saran for making an enquiry, vide Letter No. 2865 dated 03.12.2019. He further submits that the District Programme Officer, Literacy, Saran vide Letter No. 130 dated 15.09.2020 submitted a report wherein it has been contended that there is an evidence of payment to the petitioner, an amount to the tune of Rs. 1849/- only, which does not establish this fact that he worked for three years as Instructor.

5. Learned counsel for the respondent further



submits that there is a categorical finding in the foresaid report with respect to the petitioner that there is no evidence of payment made to him for three years, which will confirm his working for three continuous years as Instructor.

6. Heard learned counsel for the respective parties.

7. Short question for consideration in the present petition is before order dated 06.11.2020, petitioner is subjected to domestic enquiry or not? Undisputed facts are that petitioner was appointed on *ad hoc* basis and his services were regularized by virtue of judicial pronouncement cited in Annexures-5 and 6. The petitioner was required to comply conditions imposed in Annexures-5 and 6. It is learnt that he has complied in filing affidavit. Some person has given complaint stating that petitioner has filed false affidavit before authorities in respect of regularization. Based on such complaint, the official respondents have proceeded to cancel the order of regularization/appointment. The impugned action dated 06.11.2020 is without holding of departmental enquiry/domestic enquiry. It is to be noted that once the order of regularization is passed in favour of the petitioner even though with a certain condition even then petitioner is entitled to participate in the departmental enquiry for the reasons that there were serious



allegations levelled against the petitioner that he had filed false affidavit in order to get his service regularized. The Apex Court time and again held that even temporary employees are entitled for domestic enquiry if the allegations are made against such temporary employee before terminating his/her service. In view of these facts and circumstances impugned order dated 06.11.2020 stands set aside.

8. Writ petition is allowed.

9. Petitioner is entitled to monetary benefits during the intervening period from the date of termination till reinstatement. The same shall be calculated and disbursed within three months. The concerned official respondent is at liberty to initiate enquiry against the petitioner for furnishing false information within a period of three months from the date of receipt/production of a copy of this order.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.03.2024
Transmission Date	NA

