

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20263 of 2018

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Anjali Jaiswal Daughter of Dinesh Jaiswal, Wife of Noni Mohan Nehru,
Resident of Village- Rampur, P.S.- Murliganj, District- Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principle Secretary, Education Department, Government of Bihar, Patna.
2. The Principle Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The District Education Officer, Supaul, District- Supaul.
5. The District Programme Officer Est., District- Supaul.
6. The Block Education Officer, Supaul, District-Supaul.
7. The Block Development Officer, Supaul, Distirct- Supaul.
8. The Circle Officer, Murliganj, Dist. Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Adv.
For the Respondent/s : Mr. Kameshwar Kumar GP-17

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 16-01-2025 1. Heard learned counsel for the petitioner and learned
AC to GP-17.

2. The learned counsel for the petitioner submits that
the instant writ application has been filed for quashing the letter
bearing Memo No.1168 dated 17.09.2018 issued by the District
Education Officer, Supaul, whereby service of the petitioner has
been terminated in light of the order passed in CWJC
No.15459/2014 and also on the ground that an F.I.R. was
instituted against the petitioner and others being Supaul P.S.



Case No.508/2018 dated 30.08.2018, on the ground that petitioner had sought appointment as a teacher based on a forged caste certificate.

3. The learned counsel for the petitioner next submits that from perusal of the order impugned, it would manifest that before terminating the services of the petitioner as a teacher, no show-cause was ever issued to the petitioner nor any departmental proceeding was initiated rather based on an F.I.R. instituted by the Vigilance, in compliance of the order passed in CWJC No.15459 of 2014 the services of the petitioner came to be terminated, based on an inquiry conducted by the vigilance behind her back, as such, the petitioner was never given any opportunity to defend herself, which renders the order impugned vulnerable.

4. The learned counsel for the petitioner next submits that in sum and substance the order impugned terminating the services of the petitioner is bad for the reason that the same has been passed in complete breach of the principle of natural justice.

5. The learned counsel appearing on behalf of the State vehemently rebuts the submission of the learned counsel appearing on behalf of the petitioner and submits that no doubt



from perusal of the order impugned it appears that the services of the petitioner was terminated as a teacher based on the fact that an F.I.R. came to be instituted by the Vigilance in pursuance of the order passed by this court in CWJC No.15459/2014 with an allegation that petitioner had sought appointment as teacher based on a forged caste certificate. The learned State counsel fairly submits that no doubt before terminating the services of the petitioner an opportunity ought to have been given to the petitioner but then it is also submitted that principle of natural justice is not an unruly horse that in every case the principle of natural justice has to be applied rather it depends on the facts of the case.

6. The learned counsel for the State next submits that from perusal of the pleadings made in the instant writ application it would manifest that petitioner belongs to OBC, as the petitioner admits that she belongs to Kalwar caste and she was married to a person belonging to SC (Dusadh) and based on her marriage she had obtained the caste certificate, wherein she was described as a schedule caste. The learned counsel appearing on behalf of the petitioner does not dispute the said submission of the learned counsel appearing on behalf of the State that petitioner belongs to Kalwar caste and based on her



marriage, the certificate of schedule caste was issued in her name. The learned counsel for the State thus submits that it is a well settled principle of law that caste is determined by birth and not by marriage and for the said proposition, relies on an order of the Hon'ble Supreme Court in the case of **Sunita Singh Vs. The State of Uttar Pradesh and Others**, reported in **AIR 2018 SC 566**. The learned State counsel further submits that despite petitioner not belonging to SC category, got a certificate issued in her name, based on her marriage with a person belonging to Schedule caste, as such, the certificate was issued in complete breach of the law. The learned State counsel next submits that an SC/ST is identified and declared as such by virtue of constitutional order promulgated by Parliament in terms of Article 341 and 342 of the Constitution of India, while OBC is a subject left in the domain of respective State Government. It is next submitted that it is settled principle of law that State can neither expand or modify any entry appearing in two constitutional order nor they can by an executive order expand upon or read something into an entry which appears in an order promulgated under Article 341 and 342 of the Constitution of India, as such, it is submitted that by issuing a caste certificate in favour of the petitioner holding her to be



belonging to SC category would amount to adding Kalwar caste an OBC in the list of SC which is not permissible.

7. The learned State counsel thus submits that even if a show-cause would have been issued by the authority seeking an explanation from the petitioner with regard to her caste certificate, the petitioner would not have been in a position to rebut the same, as such, issuing of show-cause would have been an empty formality, as such, it has been submitted that principle of natural justice is not an unruly horse.

8. The learned counsel appearing on behalf of the petitioner is not in a position to rebut the said submission of the learned counsel appearing on behalf of the State but then submits that the order impugned by which the services of the petitioner has been terminated had also directed the authority to recover the amount of salary given to the petitioner by instituting a certificate case under the PDR Act. It is submitted that the said part of the order is harsh for the reason that when the petitioner had applied for obtaining certificate of SC before the concerned Circle Officer, at that time she had not concealed the fact that the caste certificate is being obtained based on her marriage and the C.O. also after examining all the facts had issued the SC certificate in favour of the petitioner knowing



very well that petitioner was seeking her caste certificate based on the fact that she was married to a schedule caste person. It is next submitted that a specific pleading to that effect has been made at para-11 of the writ petition, wherein it has been pleaded that petitioner had filed an application before the Anchal Adhikari inter alia stated that she has performed marriage with a person who belongs to SC caste and on the basis of the same the Anchal Adhikari issued caste certificate. The learned counsel next submits that from perusal of the counter affidavit filed on behalf of the D.E.O., it would manifest that the said pleading at para-11 has not been rebutted as such by applying the doctrine of non-traverse it would amount to admitting the said pleading. The learned counsel for the petitioner next submits that the services of the petitioner has been terminated but as far as second part of the order of termination is concerned, whereby recovery has been directed at least that part of the order be set aside as the petitioner got the salary after rendering her service as a teacher.

9. The learned counsel for the State vehemently rebuts the said submission of the learned counsel appearing on behalf of the petitioner and submits that from perusal of the caste certificate issued by the Circle Officer (Annexure-B to the



counter affidavit at Page-70), it would manifest that the same has been issued showing the petitioner as wife of Noni Mohan Nehru, which amply demonstrates that petitioner had not disclosed before the C.O. that she belongs to Kalwar caste and after marriage she had applied for obtaining caste certificate based on the caste of her husband. It is also submitted that even the pleadings made at para-11 of the writ application is not with clarity.

10. After hearing the learned counsel for the parties, it becomes clear that it is an admitted fact that the petitioner belongs to Kalwar caste and she had applied for seeking caste certificate of S.C. on the ground that she was married to an S.C. The law is clear that caste is determined by birth and not by marriage, further the court completely concurs with the submission of the learned counsel for the State that even if show cause would have been issued to the petitioner seeking an explanation with regard to her caste, the facts would not have changed, hence the contention of the learned counsel appearing on behalf of the petitioner that the order impugned was passed in breach of the Principle of Natural Justice has rightly been repelled by the learned counsel for the State, hence, the court finds no merit in the writ application, as such, the writ



application is dismissed.

(Satyavrat Verma, J)

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