

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3015 of 2023

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Kamlesh Kumar Son of Birendra Prasad, Resident of Mohalla-Kaji Bazar, Hilsa, P.S.-Hilsa, District-Nalanda, presently residing at Sarimpur, P.S.-Brahmpur, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
3. The Regional Deputy Director, Education, Patna Division, District-Patna.
4. The District Magistrate, Buxar.
5. The District Programme Officer (Establishment), District-Buxar.
6. The District Education Officer, District-Buxar.
7. The Treasury Officer, District-Buxar.
8. The Block Education Officer, Block-Brahmapur, District-Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bhola Kumar, Advocate
For the Respondent/s	:	Mr. Jitendra Kr. Roy 1 (Sc13)
		Mr. Jai Prabhat Kishore, AC to SC-31

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL ORDER

8 21-04-2025 Heard learned counsel for the parties.

2. The petitioner has filed this writ petition with the following three prayers:-

“... a) For a direction upon the Respondents to make payment of arrears of salary and other benefits w.e.f 03.07.1998 as well as make payment of regular salary and benefits to the petitioner who is posted as peon in the office of the Block Education Extension Officer, Block – Brahmpur in light of decision of Respondent No. 2 as contained in Memo No. 912 dated 13.04.2021

{Annexure P6} and Memo No. 1384 dated 27.07.2021 {Annexure P7}.

b) For a direction upon the Respondent Authorities to allow the petitioner to discharge his duties on the post of peon in the office of the Block Education Extension Officer, Block – Brahmpur in light of decision of Respondent No. 2 as contained in Memo No. 912 dated 13.04.2021 [Annexure P6] and Memo No. 1384 dated 27.07.2021 [Annexure P7].

c) To quash the order of the Respondent No. 2 as contained in Memo no. 2022 dated 02.11.2021 [Annexure P8] whereby the Respondent No. 2 has unilaterally reviewed and recalled his earlier orders regarding joining and payment of salary to the Petitioner in contravention of the settled principles of law as well as in violation of the principles of natural justice...”

3. The respondents have filed counter affidavit and a supplementary counter affidavit.

4. In the supplementary counter affidavit filed by the respondent No. 3/The Regional Deputy Director, Education, Patna Division, District- Patna it has been stated that the petitioner had earlier approached this Court for payment of his due salary from 03.07.1998 by filing a CWJC No. 1451 of 2016 which was disposed of by this Court on 16.01.2008. The order dated 16.01.2008 passed in CWJC No. 1451 of 2016 was also put to challenge by the petitioner by filing a LPA No. 173 of

2008 which was disposed of vide order dated 20.05.2008.

5. By referring to the aforesaid two orders passed by this Court in the writ petition as well as in the LPA, learned State counsel has submitted that in the aforesaid proceedings, this Court has already adjudicated the issue raised by the petitioner in the instant case and, therefore, this Court need not adjudicate the same issue, which has already been done by this Court in the writ petition as well as the LPA referred to hereinabove.

6. For better appreciation, the order dated 16.01.2008 passed in CWJC No. 1451 of 2006 as well as the order dated 20.05.2008 passed in LPA No. 173 of 2008 are reproduced hereinbelow:-

CWJC No. 1451 of 2006

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

The claim of the petitioner in this writ application is for payment of his dues of salary from 03.07.1998 till date.

While the petitioner contends that he was appointed on the post of Peon by a Selection Committee by the competent authority and orders were issued on 30th December, 2004 for payment of his salary, the Respondents urged that on the own showing of the petitioner he was appointed on the orders of the Minister by an order dated 26.06.1998 without following any procedure. It was next urged that the documents on which the petitioner relies to support his claim for

appointment and by a Selection Committee are forged and fabricated documents.

In absence of any assertion by the petitioner of his having been appointed in accordance with law commencing with a regular advertisement, inviting of applications, assessment of comparative merit of candidates followed by a select list, this Court finds it difficult to grant him any relief for salary. The fact that he claims salary from 1998 in the year 2006 also cannot be lost sight of in the aforesaid background.

To that extent, this writ application is dismissed.

There is, however, another aspect of the matter. While the petitioner asserts that he continued in service with the knowledge and consent of the Respondents inasmuch as his service book was also opened in pursuance thereof, the Respondents urged that they are all fabricated documents. This Court considers the present a fit case where the petitioner alone cannot be visited with consequences. Those who made hay while the sun shine must also see the dark days.

This Court, therefore, directs the Secretary, Human Resources Development Department, Government of Bihar to hold an inquiry himself of the circumstances and manner in which the petitioner gained entry into the services, those who allowed him to continue and took work from him, the genuineness of the official documents on which the petitioner asserts that he continued in service and arrive at a final determination in his own wisdom of the nature of appointment and continuance of the petitioner. Quite naturally, the Secretary shall be required to hear all concerned. Let such inquiry be completed and a report in that regard be submitted to this Court within a period of six months. The need for consequential departmental and/or criminal action against the

*delinquent shall abide by the result of such inquiry.
This writ application is, accordingly,
disposed off.*

LPA No. 173 of 2008

After having heard counsel for the appellant, we are satisfied that the order dated 16th January, 2008 impugned in the present appeal does not call for any interference. However, we clarify that if pursuant to the inquiry that has been order by the Single Judge, the order of appointment of the appellant is found to be genuine and also that he was appointed after following the procedure, the appellant shall be entitled to the salary for the period he served the respondents.

The appeal is disposed of accordingly.

7. On perusal of order dated 16.01.2008 passed in CWJC No. 1451 of 2006, it appears that the aforesaid writ petition was filed by the writ petitioner for payment of his due salary from 03.07.1998 till date. While adjudicating the aforesaid writ petition, this Court had observed in the order dated 16.01.2008 that in absence of any assertion by the petitioner of his having been appointed in accordance with law commencing with a regular advertisement, inviting of application, assessment of comparative merit of candidates followed by a select list, this Court finds it difficult to grant him

any relief for salary. While the claim of the petitioner for payment of salary was dismissed as above, the Court, however, taking note of the fact that service book of the petitioner, with a consent of the respondents was opened in pursuance of the petitioner's appointment, the Secretary, Human Resources Development Department, Government of Bihar was directed to hold an inquiry of the circumstances and manner in which the petitioner gained entry into the service, those who allowed him to continue and took work from him, the genuineness of the official documents on which the petitioner asserts that he continued in service and arrive at a final determination in his own wisdom of the nature of appointment and continuance of the petitioner. The inquiry was directed to be completed within a period of six months and the need for consequential departmental and/or criminal action against the delinquent was directed to be abide by the result of such inquiry.

8. The order dated 16.01.2008 passed in the writ petition was not interfered by the Appellate Court in the LPA No. 173 of 2008 preferred by the petitioner. However, by an order dated 20.05.2008 the LPA Court had clarified that if pursuant to the inquiry that has been order by the Single Judge, the order of appointment of the appellant is found to be genuine

and also if he was appointed after following the procedure, then it was provided that the appellant/petitioner shall be entitled to the salary for the period he served the respondents.

9. Pursuant to the direction of the Court in the writ petition, the Principal Secretary, Human Resource Development Department, Government of Bihar conducted an inquiry, the report of which was submitted on 14.07.2008. The said report has been enclosed as Annexure-R5 to the supplementary affidavit of the respondents.

10. Clause 18 of the inquiry report dated 14.07.2008 by the Principal Secretary, Human Resource Development Department, Government of Bihar reads as under:-

“...18. That from the above discussion, facts and proofs placed at the time of hearing and going through the relevant document regarding the forgery made in the matter of appointment of Sri Kamlesh Kumar it appears that -

i) Sri Kamlesh Kumar was never allowed to join, work and continue in service by any officer of the department. Sri Kamlesh Kumar for making his grievance of payment of salary manufactured forged order of appointment, approval of services and transfer, order of reliving the order of payment of salary but he never succeeded in joining the service and getting payment of salary. Therefore no officer of the department is involved in joining, taking work and continuing Sri Kamlesh Kumar.

ii) So far as matter of manufacturing of forged official order it appears that some of the employee of the DEO Office, Buxar and the employees concerned with the Section 11 of the HRD department are involved in this forgery because the forged letters were found issued in the dispatch register and some pages of dispatch register which bears the numbers of so called letters issued from DEO Buxar and the department are found missing. After going through the whole matter it appears that the matter requires thorough investigation by a competent investigating agency so that the persons involved in this forgery be suitably punished. It is therefore felt necessary that the whole matter should be handed over to the Vigilance department for thorough inquiry of the matter...”

11. In clause 18(i) of the inquiry report submitted by the Principal Secretary, Human Resource Development Department, Government of Bihar it has been recorded that the petitioner Sri Kamlesh Kumar was never allowed to join, work and continue in service by any officer of the department. The petitioner, for making his grievance of payment of salary manufactured forged order of appointment, approval of services and transfer, order of relieving and an order of payment of salary but he never succeeded in joining the service and getting payment of salary.

12. After having perused the order dated 16.01.2008

passed in CWJC No. 1451 of 2006, order dated 20.05.2008 passed in LPA No. 173 of 2008 and the inquiry report dated 14.07.2008 submitted by the Principal Secretary, Human Resource Development Department, Government of Bihar pursuant to direction of the Court in the writ petition, as discussed hereinabove, I am of the view that the issue raised by the petitioner in the instant case for determination by this Court in the nature of Prayer (a) and (b) have been found to have adjudicated by this court in the writ petition and the LPA, referred to hereinabove, pursuant to which an inquiry report dated 14.07.2008 have been submitted by the Principal Secretary, Human Resource Development Department, Government of Bihar with a categorical finding recorded therein that the petitioner was never allowed to join and work in the post and the office under reference.

13. The inquiry report dated 14.07.2008, submitted by the Principal Secretary, Human Resource Development Department, Government of Bihar pursuant to direction of this Court in the writ petition was never put to challenge by the petitioner.

14. Under the circumstances no relief sought for by the petitioner in the prayer (a) and (b) can be granted in the

present writ petition.

15. In view of the determination already made regarding status of the petitioner's employment/non employment, as discussed hereinabove, no further adjudication is called for on the prayer No. (c) of the writ petition wherein, the petitioner has put to challenge an order date 02.11.2021 contained in Memo No. 2022 issued by the respondent No. 2/ the Director, Secondary Education Department, Government of Bihar as the same has already been inquired into by the Principal Secretary, Human Resource Development Department, Government of Bihar in its inquiry report dated 14.07.2008 which inquiry was done in compliance of the order of this Court passed in CWJC No. 1451 of 2006.

16. This writ petition is, accordingly, disposed off.

(Nani Tagia, J)

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