

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7261 of 2017

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Fanindra Kumar Singh Son of Shri Jagdish Singh, Resident of Village-
Ghurapali, P.O.- Banpura, P.S.- Rasulpur, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, Bihar School Examination Board Higher Secondary, Patna.
3. Managing Committee, Swami Tridandi, Dev Mahavidyalaya, Ghurapali Saran through its Secretary.
4. The Principal, Swami Tridandi, Dev Mahavidyalaya, Ghurapali Saran.
5. The District Education Officer DEO, Chapra Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amit Kumar Singh
For the Respondent/s : Mr.Madhaw Prasad Yadav-Gp23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 09-09-2025 1. Heard the parties.

2. The petitioner has filed the present writ application seeking direction upon the respondents to conduct a fresh enquiry regarding his claim for payment of lump sum amount from grant-in-aid disbursed to teaching and non teaching employees of unaided schools / + 2 colleges.

3. The case of the petitioner in brief is that he was appointed as Office Clerk -cum- Store Keeper by the Governing Body of Swami Tridandi Dev Mahavidyalaya, Ghurapali (in short “the college”) by letter dated 10.07.1984 on a monthly salary of Rs. 1200/- paid by the college management.



4. The Government took a policy decision vide resolution no. 220 / 2007 / 538 dated 19.05.2009 sanctioning grant -in- aid to unaided schools / + 2 colleges. In pursuance thereof the Director (Secondary Education), Human Resource Development Department vide letter dt: 28.07.2010 communicated to all Principals of + 2 schools / colleges affiliated to the Bihar School Examination Board that benefits of grant -in- aid will be disbursed to teaching and non-teaching employees validly appointed till 26.03.2008.

5. In terms of this scheme Rs. 50 Lakh was released in 2008 in favour of the college. Payment was made from September, 2010 to teaching and non- teaching staffs but the petitioner was denied such payment. The petitioner thereafter approached the Principal, the Governing Body and also the District Education Officer, Chapra (Saran) but of no avail. The petitioner then filed writ application bearing CWJC No. 242 / 2011 which was disposed along with analogous cases on 02.02.2012. with a direction to the Director, Secondary Education to enquire into such matters, identify genuine employees and ensure that grant- in- aid is released only in favour of validly appointed employees continuing in service. It was further observed that for this purpose the Director could



constitute a committee and appoint Inspectors and could could restrain the Managing Committee from disbursing funds until enquiry was completed.

6. The petitioner submitted a representation on 29.02.2012 to the Director (Secondary Education) requesting necessary action in compliance with the court's order and informing that even his earlier regular salary had been stopped from September, 2010. Despite the court's direction no enquiry was conducted hence the petitioner filed MJC No. 1477 / 2013 for implementation of the court's order dt: 02.02.2012.

7. In light of this, Government vide Memo No. 1193 / 07.08.2013 constituted a three member committee comprising Regional Deputy Director as Chairman. The Committee submitted its report through letter no. 40 dated 21.02.2014. The report acknowledged the petitioner's original appointment in 1984 as Officer Clerk cum Store Keeper but noted that on 16.09.1991 the Managing Committee had placed him as Geography Technician and his name was recommended to the Bihar Intermediate Council accordingly. Since the post of Geography Technician was not sanctioned and no reply came from the Council, the Committee held that he cannot be paid from grant -in- aid while working on unsanctioned post.



8. Learned counsel for the petitioner submits that enquiry conducted by the respondent authorities suffers from grave procedural irregularities and is wholly unfair. The enquiry committee instead of conducting an independent and objective assessment chose to rely solely upon the statement of the Principal of the institution ignoring the presence of the petitioner during inspection and failing to afford him any opportunity of hearing . Even the Director, Secondary Education himself vide letter no. 371 dated 21.03.2014 specifically recorded that the petitioner had not been heard in the course of enquiry. The said authority further directed the Regional Deputy Director to conduct a fresh enquiry and submit a report after granting the petitioner an opportunity to be heard.

9. Learned counsel further submits that the petitioner continued to raise his grievance before the concerned authorities both orally and through written representation but the respondents instead of redressing the grievance have deliberately chosen to remain inactive. Such arbitrary inaction not only causes serious prejudice to the petitioner but also amounts to denial of his lawful dues.

10. On the other hand, learned counsel for the respondents argued that petitioner's grievance essentially lies against the



governing body of the college in relation to payment of salary. The Bihar School Examination Board has only limited role of releasing funds while the responsibility of disbursement rests with the college managing committee. The Board took steps to hear the matter, enquire into through the District Education Officer, Saran and until such report is received and the allegations are duly verified the Board has taken a firm stand that no further allotment of aid amount shall be released to the said institution. Therefore the claim of the petitioner does not want interference in exercise of writ jurisdiction. The proper remedy available to the petitioner is to approach the civil court of competent jurisdiction for adjudication of his claim relating to salary.

11. I have heard learned counsel for the parties. As per own case of the petitioner he was appointed in 1984 as Office Clerk-cum- Store Keeper. It is equally admitted that the governing body of the college in 1991 altered his position and placed him as Geography Technician, a post which was not sanctioned by the competent authority. The three member committee while acknowledging his initial appointment rejected his claim on the ground that he was working on non sanctioned post.

12. It is true that petitioner was not afforded hearing as



noted by the Director himself however the ultimate finding of the Committee rests on an undisputed fact that the post of Geography Technician was never sanctioned.

13. The Hon'ble Supreme Court in the case of S.L. Kapoor versus Jagmohan reported in (1980) 4 SCC 379 has observed that the court may not issue its writ to compel the observance of natural justice not because it is not necessary to observe natural justice but courts do not issue writs which are "futile". Similarly, in the case of Viveka Nand Sethi versus J & K Bank Ltd. reported in (2005) 5 SCC 337 in paragraph 22 the Supreme Court has observed as follows:-

“ 22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted an enquiry would be an empty formality. Even the principle of estoppel will apply. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case.”

14. The petitioner has not denied the fact that his position



was altered and the governing body in 1991 appointed him as Geography Technician. In the present case even if a fresh enquiry is conducted, the absence of a sanctioned post would remain fatal to the petitioner's claim. No material has been brought on record to show that the post of Geography Technician was ever sanctioned or that his initial appointment as Office Clerk -cum- Store Keeper continued without alteration.

15. Accordingly the claim of the petitioner does not warrant interference in exercise of writ jurisdiction under Article 226 of the Constitution of India by this court. In the result, the present writ application is dismissed.

(Anil Kumar Sinha, J)

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