

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12157 of 2014

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Nirmal Kumar Son of Sri Ram Das Saw R/o village- Sirkhindi, P.S- Hilsa,
District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Secretary, Primary Education, Government of Bihar, Patna.
4. The District Superintendent of Education, Jamui, District- Jamui.
5. The District Education Officer, Jamui, District- Jamui.
6. The District Program Officer Establishment Education, Jamui, District- Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Murari Mishra
For the Respondent/s : Mr. Ashok Kumar Keshari, AAG-12

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

11 07-04-2026 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The instant writ application has been filed for the
following reliefs:-

(i) For setting aside the order passed vide Memo No.832 dated 10.06.2014 by the District Education Officer, Jamui, whereby and whereunder the respondent concerned has dismissed the petitioner from the service of Assistant Teacher Primary School, Guhia (Chakai), District- Jamui.

(ii) For directing the respondent to reinstate the petitioner in the service on the post from which he has been dismissed from service.

(iii) For any other relief(s) for which the petitioner is found entitled in the facts and circumstances of



the case.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Matric trained Assistant Teacher vide Memo No. 7724-25 dated 25.04.1988, and after having joined the duties, the petitioner was appointed as Assistant Teacher in Primary School Badhmara in Khaira Circle, Jamui, and in the year 1992, he was transferred from Badhmara to Suhiya Primary School in Chakai Circle, Jamui, and since then he was performing his duty regularly with full satisfaction to all concerned. It is next submitted that vide Memo No. 332 dated 18.12.2004, the respondent concerned directed the petitioner to produce the document relating to his appointment in order to get the same verified by the concerned board, and till verification, the salary of the petitioner was stopped.

4. It is next submitted that the petitioner approached the Hon'ble Court vide CWJC No. 7076 of 2011, which was heard and disposed of on 27.06.2012 with a direction to pay legitimate dues within three months. The respondent concerned did not pay the dues amount to the petitioner within time. In the light of the order of this Court, the petitioner filed a contempt petition vide MJC No. 5266 of 2012. The payment of salary



was thereafter made to the petitioner, but a departmental proceeding was initiated against the petitioner vide Memo No. 871 dated 07.06.2012, and based on such enquiry, the petitioner is said to have been removed from service vide Memo No. 832 dated 10.06.2014 in a mechanical manner, holding that the petitioner had obtained appointment on the basis of a degree granted by the Hindi Sahitya Sammelan, Prayag, which was not applicable for appointment on the post of Assistant Teacher.

5. At this stage, learned counsel for the petitioner, by referring to the Interlocutory Application No. 01 of 2026, by which the issues have been put at rest by the learned Single Judge relying upon the judgment rendered in ***Suryadeo Singh vs. The State of Bihar & Ors.***, reported in ***2011 (1) PLJR 28***, submits that in a similarly situated case, the learned Single Judge in the case of ***Munni Devi vs. State of Bihar & Ors.*** (CWJC No. 13024 of 2019) has observed the following:-

6. Learned counsel further submits that before issuance of the order of removal, no notice or show cause was served upon the petitioner at any point of time and the impugned letter is bad in law on this very count itself. The petitioner has relied upon the order passed by a co-ordinate Bench of this Court in CWJC No.4455 of 2017 and CWJC No. 16939 of 2018 in order to show that in the similar mater the co-ordinate Bench



of this Court has allowed the writ applications filed by the Primary Teachers on the similar facts. Learned counsel in support of his argument also relied upon a judgment of this Court in a case of Suryadeo Singh Vrs. The State of Bihar & Ors. reported in 2011(1) PLJR 28.

7. On the other hand, learned counsel for the Respondents-State submits that there is an alternative remedy of appeal. The petitioner may be relegated to the remedy of appeal before the Appellate Authority.

8. I have heard learned counsel for the parties and have gone through the writ petitions and other pleadings filed by the parties. From perusal of the Circular dated 25.8.2008 vide Memo No. 3152, it is evident that the certificate issued by the Hindi Sahitya Sammelan has been made invalid for the purpose of appointment on the post of Primary Teacher with effect from the date of issuance of the Circular dated 25.08.2008 and, admittedly, the petitioner has been appointed prior to the date of issuance of Circular in the year 2007. It appears that the degree obtained from the Hindi Sahitya Sammelan, Prayag, Allahabad was valid for appointment in the year 2007 and a co-ordinate Bench of this Court in CWJC No.4455 of 2017 has taken the similar Circular into consideration and has allowed the writ application. I have also gone through the judgment relied upon by the petitioner reported in 2011 (1) PLJR 28, paragraph-10 of the same is relevant and quoted hereinbelow:-

“10. In the light of the aforementioned submissions, the first question



which needs to be examined is whether the writ petitions are maintainable in absence of the petitioners not exhausting the statutory remedy of appeal. It is not in doubt that both under the Sewa Sharta Niyamavali, 1983, there is a provision of appeal against the order of punishment, but then a question arises as to whether both the writ petitioners can be non-suited on the ground of not filing their appeal against the impugned orders of the removal of services before filing of the writ petitions. This question, however, as with regard to the maintainability of the writ application should not detain this Court, in view of the fact that it is an admitted position that as the orders of punishment came to be passed without compliance of the principle of natural justice. It is not disputed by the learned State Counsel that the Director, Secondary Education before passing the impugned orders had not issued any notice and/or given any opportunity of hearing. Therefore, once it is found that the impugned orders have been passed in complete breach of principles of natural justice, this Court cannot shut its doors only because the petitioners did not file their appeal. Way back, the Apex Court in the case of State of U.P. vs. Md. Nooh reported in AIR 1958 SC 86 had held that writ applications under Article 226 of the Constitution of India would be maintainable before the High Court even in those cases where the statutory remedy of appeal has not been invoked by the petitioners when the order passed and assailed is either in violation of the principle of natural justice or is wholly without jurisdiction. The aforesaid view of the Apex Court has been reiterated from time to time in series of judgments as was noticed by the Apex Court itself in the case of Whirlpool Corporation vs. Registrar of Trade Marks Mumbai and Others reported in (1998)8 S.C.C. 1 wherein their Lordships had held as



follows:-

“.....Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged”

9. In view of the aforesaid discussions, I find that before issuance of the order of removal, the petitioner was not served with any show cause notice and the letter impugned is violative of principle of natural justice and accordingly the contention raised by the State counsel that the petitioner may be relegated to alternative remedy of appeal is not sustainable and accordingly the same is rejected. The impugned letters are also not sustainable on the fact that the petitioner was appointed prior to coming into force of the Circular dated 25.08.2008 by which the certificate issued by the Hindi Sahitya Sammelan, Prayag, Allahabad, was declared invalid.



6. Lastly, learned counsel for the petitioner submits that the learned Single Judge has declared that the impugned order, which has been made applicable retrospectively, is invalid, and the petitioner, admittedly, having been appointed in the year 1988, is not covered by the said Circular dated 25.08.2008 issued by the Government of Bihar vide Memo No. 3152.

7. Per contra, learned counsel for the State does not dispute the submissions advanced on behalf of the petitioner and submits that the issues have already been considered in the case of **Munni Devi** (*supra*), therefore, appropriate directions may be issued for adjudication of the grievances of the petitioner.

8. Considering the stand of the parties and the Circular dated 25.08.2008 issued by the Government of Bihar vide Memo No. 3152, the same does not cover the case of the petitioner as he was appointed in the year 1988 as per the judicial pronouncement, and as such, the impugned order dated 10.06.2014 as contained in Memo No. 832 is not sustainable in law and is, therefore, set aside, and the petitioner is directed to be reinstated in service forthwith.



9. Since the termination order has been held to be bad in law and the petitioner was always ready to discharge the duties on the post, but because of the impugned order the duties could not be discharged by him, therefore, the principle of 'no work, no pay' would not apply in this case. As such, the petitioner is entitled to all such benefits at par with other similarly situated persons who have been reinstated back in service pursuant to the orders passed in the cases referred hereinabove. Accordingly, the consequential benefits are directed to be extended in favour of this petitioner on similar terms as directed in the case of Munni Devi (supra).

10. With the aforesaid observations and directions, the instant writ application stands allowed.

11. Pending I.A., if any, stands disposed of.

(Ajit Kumar, J)

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