

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14421 of 2009

Sunil Kumar Singh S/O Sri Satya Narayan Singh R/O Vill-
Parmanandpur, P.S-Lalganj, Distt- Vaishali

Versus

1. The State Of Bihar Through The Principal Secretary (Secondary Education), Human Resource Department, Government Of Bihar, New Secretariat, Patna
2. Director, Secondary Education, Human Resources Department Government Of Bihar, New Secretariat, Patna
3. Deputy Director, Secondary Education, Human Resource Department, Government Of Bihar, New Secretariat, Patna
4. Regional Deputy Director Of Education Human Resources Department, Tirhut Division, Muzaffarpur
5. District Education Officer, Vaishali, Hajipur
6. Headmaster-In-Charge, Project Girl'S High School, Jalalpur, Lalganj, Vaishali

with

Civil Writ Jurisdiction Case No. 14698 of 2009

Radha Ranjan Sinha S/O Late Nagina Prasad Sinha Vill.- Bhath,
P.S.- Jandaha, Distt.- Vaishali

Versus

1. The State Of Bihar Through The Principal Secretary (Secondary Education), Human Resource Department, Government Of Bihar, New Secretariat, Patna
2. Director, Secondary Education, Human Resource Department, Government Of Bihar, New Secretariat, Patna
3. Deputy Director, Secondary Education, Human Resource Department, Government Of Bihar, New Secretariat, Patna
4. Regional Deputy Director Of Education Human Resource Department, Tirhut Division, Muzaffarpur
5. District Education Officer Vaishali, Hajipur
6. Headmaster-In-Charge, Project Girls' High School, Jandaha, Vaishali

with

Civil Writ Jurisdiction Case No. 14699 of 2009

Ajay Kumar S/O Sri Shiv Chandra Prasad Singh Vill.- Baikunthpur,
P.S.- Raja Pakar, Distt.- Vaishali

Versus

1. The State Of Bihar Through The Principal Secretary (Secondary Education) Human Resource Department, Government Of Bihar, New Secretariat, Patna
2. Director, Secondary Education Human Resource Department, Government Of Bihar, New Secretariat, Patna
3. Deputy Director, Secondary Education Human Resource Department, Government Of Bihar, New Secretariat, Patna

4. Regional Deputy Director Of Education Human Resource Department, Tirhut Division, Muzaffarpur
5. District Education Officer Vaishali, Hajipur
6. Headmaster In-Charge Project Girls' High School, Sahdei Buzurg, Vaishali

For the Petitioners:

Mr. Shivendra Kishore,
Advocate

For the State:

AC to G.A.-4

05. 30.09.2011

Heard learned counsel for the petitioners

and the counsel appearing for the State.

Petitioner in all these three Writ Applications have prayed for quashing of Order dated 23.09.2009, passed by Three-Men-Committee of Human Resources Development Department, Government of Bihar and communication of this Order to the petitioners vide different Memo Nos. dated 24.09.2009 under the signature of Deputy Director, whereby petitioners' appointment have been held to be illegal. Petitioners have further prayed for a direction to the respondents to accept their joining and allow them to discharge their duties with all consequential benefits, including arrears of salary.

Facts as revealed in the Writ Application is that in response to an advertisement dated 14.0.1987, issued under the signature of Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, published in Bihar Gazette, petitioners

and several other eligible candidates had submitted their applications for appointment on Class-III post of Clerk in different Offices under the Education Department. Minimum qualification for applying for the post was Matriculation with 1st Division with a specific speed of typing. It was also required that the candidates must be registered under Employment Exchange. The interview letters were issued and the petitioners were interviewed on the specified date. They faced interview, conducted by the Divisional Selection Committee and were recommended for appointment against the sanctioned vacant post of Clerk in the pay-scale of Rs. 580-860/-.

Petitioners' case is that the Regional Deputy Director of Education was the competent authority for making appointment on Class-III post of Clerk, as per Ministerial Service Cadre (Recruitment, Promotion and Transfer) Rules, 1974. Rule 5 of 1974 Rules, provides that the Regional Deputy Director of Education, Tirhut Division will be the appointing / controlling authority for taking any administrative decision including appointment in that very division.

The petitioner Radha Ranjan Sinha was posted as Clerk in Project Girls High School,

Jandaha, Vaishali, petitioner Sunil Kumar was posted in Project Girls High School, Jalalpur, Lalganj, Vaishali and petitioner, Ajay Kumar was posted in Project Girls High School, Sahdei Buzurg, Vaishali. They were posted in Project Girls High School as State Government had decided to establish Project Girls High School in each Block and one post of Clerk was sanctioned in each Project Girls High School. Petitioners' names were also approved by the Divisional Establishment Committee along with 131 candidates, who had been recommended by the Divisional Selection Committee for appointment.

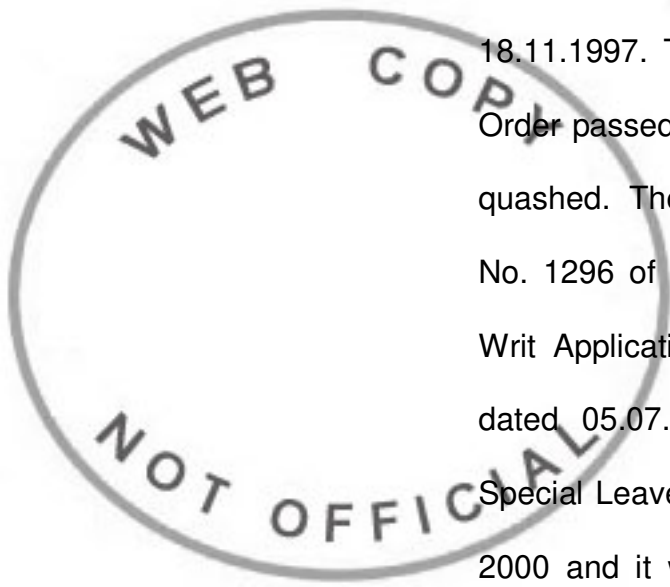
Counsel for the petitioners submits that the procedure adopted for appointing these petitioners as well as other candidates whose names were there in the panel of 131 candidates were same. Only their place of posting varied as per the decision and recommendation of the Divisional Selection Committee. Petitioners were continuing peacefully on their post, since the date of their appointment in the year 1987 till 1994. For the first time, the District Education Officer, Vaishali directed vide letter dated 1141, dated 19.04.1994 for withholding payment of salary to the petitioners till

the enquiry with regard to the legality of petitioners' appointment is complete. Finally, the enquiry was conducted and the District Education Officer, Vaiashali vide Memo No. 183, dated 31.01.1997 directed to release the salary of the petitioners.

However, subsequently, the Director, Secondary Education issued an office order, bearing Memo No. 4812, dated 18.11.1997, whereby appointment of 39 Clerks, including these petitioners was held to be illegal appointment. Petitioners, in response to letter no. 4812, dated 18.11.1997 filed their representation before the Director, Secondary Education, giving details of their appointments that on the basis of advertisement published in Bihar Gazette, their applications for appointment were considered and the Divisional Selection Committee had made recommendations for their appointments. On such recommendation, they have been appointed by a competent authority as per 1974 Rules. The Director, Secondary Education, considering representation of the petitioners, partially modified the order and allowed them to continue in service vide Memo No. 741, dated 01.12.1997.

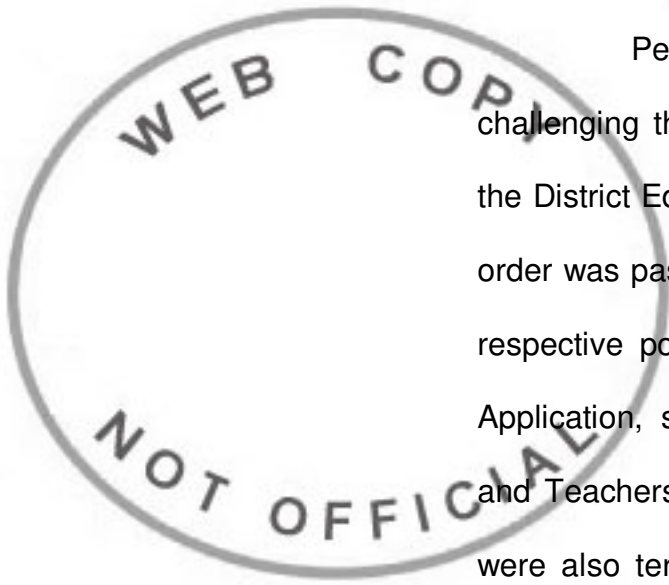
One of the Clerks, namely, Mohan Singh,

whose name was also amongst 39 Clerks, whose appointments were held to be illegal, did not represent before the Director, Secondary Education, but filed C.W.J.C. No. 11349 of 1997, challenging the order, contained in Memo No. 4812, dated 18.11.1997. The Writ Application was allowed and Order passed by the Director, Secondary Education quashed. The State Government preferred L.P.A. No. 1296 of 1999 against the order passed in the Writ Application, which was dismissed vide Order dated 05.07.2000. The State of Bihar preferred Special Leave to Appeal (Civil) No. 19601-19603 of 2000 and it was also dismissed vide Order dated 19.12.2000. During all these period, petitioners continued on their posts in their respective Project Girls High Schools. The Director, Secondary Education, after disposal of S.L.P. No. 19601-19603/2000, issued letter no. 715 (P), dated 07.12.2004 to the District Education Officer, Vaisahli informing that on enquiry appointment of four Clerks, including these petitioners, working in one or other Project Girls High School in the District of Vaishali have been found illegal. The reason assigned for holding the appointment illegal was that they have been appointed by the R.D.D.E. in the Project Girls



High School, and not from the panel prepared by the office of District Education Officer. The District Education Officer was directed to terminate petitioners' appointment, after following the procedure.

Petitioners filed C.W.J.C. No. 15 of 2005, challenging the order dated 07.12.2004, passed by the District Education Officer, Vaishali, in which stay order was passed and petitioners continued on their respective posts. During the pendency of the Writ Application, several other similarly situated Clerks and Teachers, posted in Project Girls High School, were also terminated from their service, on similar ground. They all challenged their termination orders by filing Writ Applications. C.W.J.C. No. 12302 of 2003 and analogous cases were heard and allowed quashing the termination orders. The respondents were directed to allow the writ petitioners to discharge their duties and to make payment of their salary, after due verification regarding continuation on their duties, during the pendency of the Writ Applications vide C.W.J.C. No. 15 of 2005, filed by petitioners, was also allowed in terms of the Order passed in C.W.J.C. No. 12302 of 2003 and analogous cases. The State preferred L.P.A. against

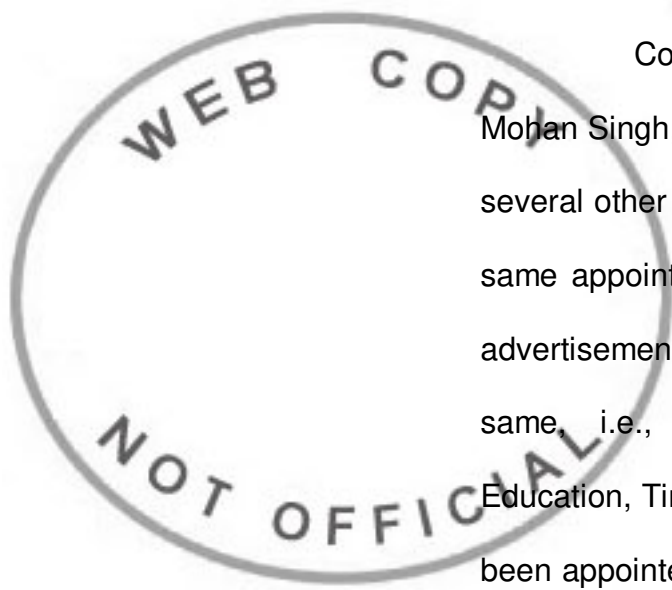


the order passed in C.W.J.C. No. 12302 of 2003 and C.W.J.C. No. 15 of 2005, which was disposed of in terms of direction of this Court, dated 22.11.2006. The respondent State and its authorities were directed to constitute a Committee of three Secretaries, to consider individual cases of writ petitioners after giving them an opportunity of hearing and to reach to a decision regarding nature of their appointment and to decide its legality. It was also directed that until enquiry is concluded, status quo shall be maintained and writ petitioners will continued on their posts, if already continuing.

Counsel for the petitioners submits that though petitioners challenged the Order, dated 07.12.2004 by filing Writ Application, but one Faiz Ahmad, instead of challenging his termination order by filing a Writ Application, filed his representation before the Secretary, Secondary Education, Bihar, Patna. The Secretary, Secondary Education, stayed the operation of termination order dated 07.12.2004 and Faiz Ahmad continued on account of stay order passed in his favour by the Secretary, Secondary Education. Petitioners also continued in terms of the Status Quo Order passed in the Writ Application as well as by the L.P.A. Bench. However, case of the

petitioners was considered by the Three-Men-Committee and impugned order dated 24.09.2009 passed whereby the petitioners' appointment is held to be illegal. But so far Faiz Ahmad is concerned, he is still continuing on his post.

Counsel for the petitioners submits that Mohan Singh, Faiz Ahmad and petitioners as well as several other persons, all were appointed, observing same appointment procedure, in response to same advertisement. Their appointing authority was also same, i.e., the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur. They all had been appointed in terms of 1974 Rules under which, Regional Deputy Director is competent for making appointment on Class-III posts. Following same procedure all had been appointed, panel of which was approved by Divisional Selection Committee. This process of appointment was held to be legal in the Writ Application filed by the Mohan Singh and others, and the order passed in Writ Application affirmed up to the Apex Court, as LPA and SLP preferred by the State of Bihar had been rejected up to the Apex Court. There was no reason for holding any other opinion, with regard to legality of appointment of rest of the candidates, who were

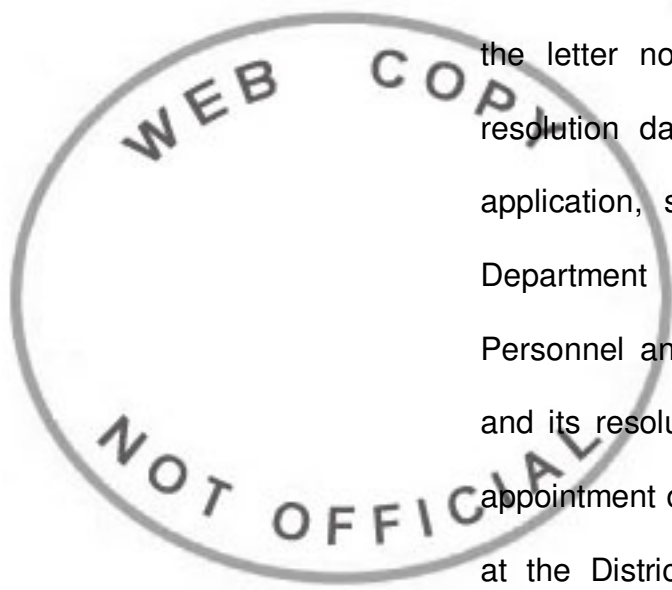


also appointed through same appointment process.

Counsel for the petitioners further submits that the Director Secondary Education, ignoring the order passed by the Apex Court has taken a different view in the matters of 39 candidates holding that their appointment in the Project Girls High School is illegal. The order of Director, Secondary Education was quashed by the Single Bench, but the Division Bench in LPA directed for conducting a fresh enquiry by Three-Men-Committee. The Three-Men-Committee committed serious error while considering individual cases of writ petitioners. Three-Men-Committee should have considered legality of appointment in terms of statutory rule, instead of following executive instructions. Ignoring statutory rule, appointment of petitioners have been held illegal for the reason that letter issued by the Personnel and Administrative Reforms Department contained in Memo No. 16440, dated 03.12.1980 was ignored in which there is a provision that for making appointment on Class-III posts in the Regional Office, the appointment should have been made on the basis of marks obtained in the School / College Examination and a merit list prepared on recommendation of the District Selection Committee,

constituted under the Chairmanship of the head of the District in which the District Welfare Officer and the Officer of other Departments will be the Members.

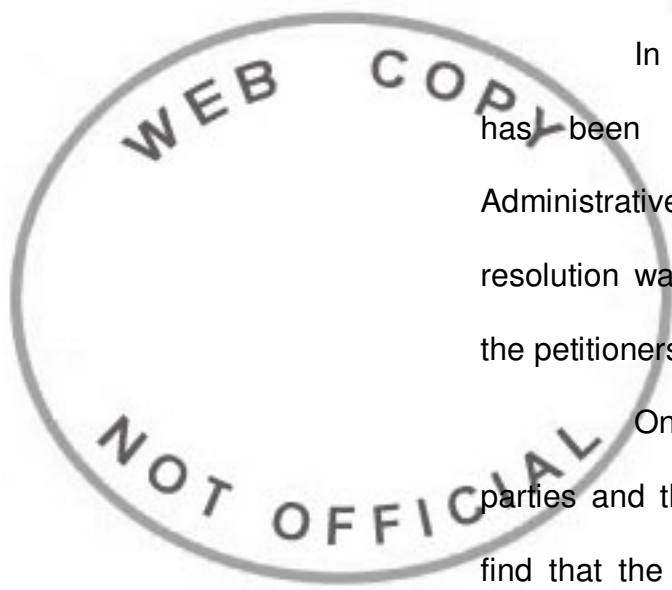
Counsel for the petitioners submits that the letter no. 16440, dated 03.12.1980 and the resolution dated 1918, dated 28.01.1976 has no application, so far appointment in the Education Department is concerned. The letter of the Personnel and Administrative Reforms Department and its resolution has application in the matters of appointment on Class-III posts in other Departments at the District Level. The District Level Selection Committee under the Chairmanship of the District Magistrate makes recommendation for such appointments. But so far the appointment in the Education Department at the divisional level, at the relevant time is concerned, was governed by 1974 Rules. Under this rule, for making appointment at divisional level, Regional Deputy Director of Education and the Divisional Level Selection Committee was competent for recommendation and for issuing appointment letters. The Three-Men-Committee completely misdirected itself and passed an erroneous order that petitioners' appointment on



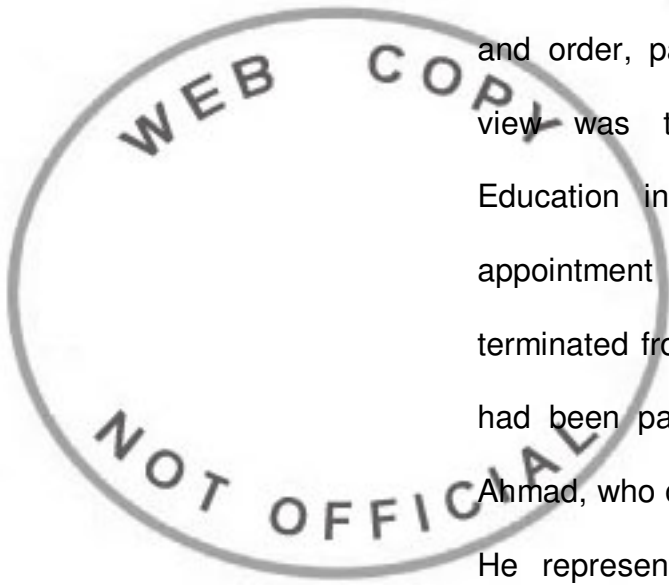
Class-III post of Clerk in Project Girls High School is illegal on account of non-observance of Personnel and Administrative Reforms Department's letter no. 16440, dated 02.12.1980 and the resolution no. 1918, dated 28.10.1976.

In the Counter affidavit also similar stand has been taken that since Personnel and Administrative Reforms Department's letter and the resolution was not observed in the appointment of the petitioners, as such their appointment is illegal.

On consideration of the pleadings of the parties and the submission of the Counsel, what I find that the State Government and its authorities have adopted two different policies for deciding legality of appointment of employees, who were appointed, observing same procedure in response to same advertisement. Some of the employees, like Mohan Singh and others, who challenged the order bearing Memo No. 183, dated 31.01.1997, passed by the Director, Secondary Education by filing Writ Application, their appointment was held legal up to the Apex Court, they are continuing in service and they are not being disturbed. So far petitioners are concerned, they did not challenged the order passed by the Director, Secondary Education in the year



1997, they simply represented before the concerned authority and the operations of that order was stayed / modified and petitioners were allowed to continue on the post. But, subsequent to the final judgment of the Apex Court, instead of following the judgment and order, passed by the Apex Court, a contrary view was taken by the Director, Secondary Education in the case of the petitioners. Their appointment was held to be illegal and they were terminated from their service. The termination order had been passed in case of four, including, Faiz Ahmad, who did not challenge the termination order. He represented the case before the Secretary, Department of Education and he was allowed to continue. The petitioners challenged the termination order, which was quashed and Writ Application was allowed, but in the LPA preferred by the State, the Division Bench directed for considering individual cases of petitioners and several other persons, who were also subsequently terminated, by constituting Three-Men-Committee. The Three-Men-Committee, placing reliance on some letters and circulars of the Personnel and Administrative Reforms Department, Government of Bihar, Patna and ignoring the statutory rule, has held petitioner's appointment



illegal.

I find that the action of respondent authorities in passing the impugned order, terminating the petitioners from the service on the ground that their appointment was illegal, is not sustainable. In case, similarly appointed employees, their appointments have been held to be legal by the Apex Court. Similar view should have been taken in the case of the petitioners also, specially when they were appointed following all same procedure and the statutory rules. This in itself is sufficient for quashing impugned termination order dated 24.09.2009, communicated to the petitioner through Memo Nos. dated 24.09.2009.

I.A. No. 6395 of 2010 has been filed by petitioner, Radha Ranjan Sinha (C.W.J.C. No. 14698 of 2009) for directing the respondents for making payment of his salary as well as arrears of salary for the reasons that he is continuing on his post in terms of stay order, passed in Writ Application, despite issuance of impugned termination order.

The termination order dated 23.09.2009, passed by the Three-Men-Committee of the Human Resources Development Department, Government

of Bihar, Patna communicated to the petitioners vide Memo No. 206, 208 and 209, dated 24.09.2009 is quashed. Petitioners will continue on their posts, as they have continued even during pendency of the Writ Application. Respondents 2, 3, 4 and 5 are directed to pay petitioners' arrears of salary since 16.04.2005 and to pay month to month current salary with all consequential benefits. Petitioners had initially challenged their termination order in C.W.J.C. No. 15 of 2005 and they continued on their post as status quo order was passed in their favour subsequently to issue of impugned order dated 23.09.2009, petitioners challenged it in the present Writ Applications and Stay Order was passed in their favour. Petitioners gave their joining and continued on the post, as such they shall be paid their arrears of salary with all consequential benefits for entire period they had worked from 16.04.2005 till date. Petitioners shall be allowed to continue. All payments must be made to the petitioners within 12 weeks from the date of production / communication of this Order.

Accordingly, these Writ Applications are allowed.

SKM

(Mridula Mishra, J.)