

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1190 of 2014

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Dilip Kumar Sah, S/O Sri Kewal Sah, resident of village- Neyam, P.S. Hayaghat, District- Darbhanga

... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resource Department, Govt. of Bihar, Patna
3. The Director, Primary Education Govt. of Bihar, Patna
4. The District Magistrate, Darbhanga
5. The District Programme Officer, Darbhanga
6. The B.D.O. Hanuman Nagar Block, District- Darbhanga
7. The Block Education Extension Officer, Hanuman Nagar, District- Darbhanga
8. The Mukhia, Gram Panchayat Raj -Nayam Chhatona, P.S. Hayaghat, District- Darbhanga.
9. The Secretary, Gram Panchayat Raj -Nayam Chhatona, Hanuman Nagar Block, District- Darbhanga
10. Uday Shankar Yadav, S/O Bhuneshwar Yadav, resident of village- East Vehawali, P.S. Hayaghat, Dist. Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhubneshwar Prasad, Advocate.

For the Respondent/s : Mr. Avnish Nandan Sinha, G.P. 11
Mr. Jay Prakash Sharma, A.C. to G.P. 11

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 31-01-2014

Heard learned counsel for the parties.

The prayer of the petitioner in his writ application reads as follows:

“(i) For issuance of an appropriate writ, order, direction for quashing the order dated 31.01.2012 passed in objection case No. 109/2011 by District Teacher Employment Appellate Authority, Balbhadrapur Laheria Sarai, Darbhanga where by and whereunder the objection filed on behalf of the petitioner in pursuance of order dated 22.7.2011 passed in C.W.J.C. No. 15.5.59/2007 was rejected say that the petitioner’s claim was rejected earlier hence it is not proper to re-consider the case of petitioner.

(ii) For issuance of an appropriate writ, order direction to quash the order dated 30.12.2006 passed by the District Superintendent of Education, Darbhanga, now the post is


known as District Programme Officer, Darbhanga by which the petitioner's employment on the post of Shiksha Mitra cancelled illegally.

(iii) For issuance of an appropriate writ, order direction to the respondent to adjust the petitioner on the post of Panchayat Teacher in view of the provisions of Bihar Panchayat Prathmik Shikshak (Niyojan and Seva Sart) Nimawali, 2006.

(iv) For issuance of an appropriate writ, order direction to the respondents to make payment of fixed monthly salary of the petitioner w.e.f. 1.7.2006 till date and current monthly salary for the post Panchayat Teacher regularly".

Learned counsel for the petitioner has submitted that the District Teacher Employment Appellate Authority, Darbhanga (hereinafter referred to as 'Tribunal'), while passing the impugned order dated 31.01.2012 in case No. 109 of 2011, has committed an error in treating the application filed by the petitioner as one of the review. He has further submitted that the Tribunal ought to have decided the case of the petitioner on merit and should not have disposed of the case on the basis of an earlier order dated 14.12.2009 passed by the Tribunal in case No. 627 of 2009 because that case was decided only on the ground of limitation and not on merit.

In the considered opinion of this Court, all these statements of the petitioner had to be noted for its being rejected. The pros and cons of the claims of the petitioner is that he was engaged as a Panchayat Shiksha Mitra somehow in the year 2005. As is well known, the appointment, on the post of Panchayat



Shiksha Mitra, was only for a period of 11 months and his such appointment obviously came to an end on 21.11.2006. In absence of any explanation of his service rendered on the post of Panchayat Shiksha Mitra, the claim of the petitioner that he was again appointed on 21.05.2006, for a further period of 11 months and on the basis of that he became Panchayat Teacher, was in fact gone into by the Tribunal in a very elaborate manner when the petitioner's appointment was, in fact, cancelled on 30.12.2006.

Let it be noted that by an order dated 30.12.2006, it was held that the very engagement of the petitioner as Panchayat Shiksha Mitra was bad. This order dated 30.12.2006 had remained unchallenged for a period of almost three years and after the constitution of the Tribunal, the petitioner had filed appeal case No. 627 of 2009 before the Tribunal, which was dismissed by an order dated 14.12.2009, relevant portion whereof reads as follows:

“14.12.2009

वाद की सुनवाई की गयी। आवेदक का कहना है कि हनुमाननगर प्रखण्ड के ग्राम पंचायत राज नेयाम छतौना अन्तर्गत प्रा0 विद्यालय भवानीपुर (कन्या) में पंचायत शिक्षा मित्र के पद पर नियोजन किया गया था। जिला पदाधिकारी दरभंगा द्वारा आवेदक का नियोजन रद्द कर दिया गया। आदेश के आलोक में नियोजित पंचायत शिक्षा मित्र का प्रमाण पत्र जाली हैं यह बात प्राथमिकी संख्या 19/07 में अनुसंधान में स्पष्ट हो गया है तथा बिहार विद्यालय परीक्षा समिति के पत्र से भी यह स्पष्ट है। आवेदक का अनुरोध है कि प्रतिवादी उदय शंकर यादव को सेवा से हटाकर इनका नियोजन किया जाए।


प्रतिवादी द्वारा बतलाया गया कि आवेदक का नियोजन जिला पदाधिकारी दरभंगा के आदेश ज्ञापांक 1990 दिनांक 01.12.06 द्वारा निरस्त किया जा चुका है एवं प्रतिवादी उदय शंकर यादव प्रा0 विद्यालय भवानीपुर कन्या में कार्यरत है एवं उनका मानदेय का भुगतान भी हो रहा है।

पक्षों के उपर्युक्त कथन के आलोक में उनके द्वारा दाखिल दस्तावेजों का अवलोकन किया। आवेदक का नियोजन जिला पदाधिकारी दरभंगा के आदेश दिनांक 01.12.06 द्वारा रद्द किया जा चुका है। तीन साल बाद इसपर विचार करना विधि सम्मत नहीं हैं आवेदक जिला पदाधिकारी, दरभंगा के आदेश से संतुष्ट नहीं थे तो उन्हें ससमय सक्षम न्यायालय में अपील दायर करना चाहिए था। वादी का दावा सही नहीं है।

अतः वाद खारिज किया जाता है।”

Once the order of the Tribunal was against the petitioner, there was no question for the Tribunal to entertain another complaint as with regard to same grievance and, therefore, the Tribunal had not committed any error in passing the impugned order holding that it had got no power of review and, in fact, the issue had been questioned by the earlier order of the Tribunal.

The averment of the learned counsel for the petitioner that such complaint was filed by the petitioner in terms of an observation made by this Court vide order dated 22.07.2011 in C.W.J.C. No. 15593 of 2007 has to be also understood in the context that if the petitioner, in the mean time, having filed the writ application against the original order of his dismissal dated 30.12.2006, had already moved the Tribunal by filing his appeal



case No. 627 of 2009 which had already been dismissed on 14.12.2009, he should have not withdrawn his application, but to assail that order in the writ application. The petitioner, in fact, never informed this Court that during the pendency of C.W.J.C. No. 15593 of 2007, he had already moved the Tribunal and an adverse order had already been passed against him for which the petitioner cannot take advantage of his own wrong.

In that view of the matter, this Court does not find any error in the impugned order passed by the Tribunal, relevant portion whereof reads as follows:

“पक्षों के उपरोक्त कथन एवं उनके द्वारा प्रस्तुत दस्तावेजों के अवलोकन से स्पष्ट होता है कि आवेदक का नियोजन शिक्षा मित्र के पद पर कम मेधा अंक रहते हुए सुख सुविधा समिति द्वारा कर दिया गया था जिसे जांचोपरान्त जिला पदाधिकारी के आदेश के आलोक में जिला शिक्षा अधीक्षक द्वारा रद्द कर दिया गया। प्रखंड शिक्षा पदाधिकारी द्वारा भी जांच की गई थी और पाया गया था कि आवेदक दिलीप कुमार साह का इंटरमीडिएट में प्राप्तांक 551 था परन्तु उसे 631 दिखाकर उनकी नियुक्ति कर दी गई एवं प्रतिवादी उदय शंकर यादव की नियुक्ति सुख सुविधा समिति द्वारा जांचोपरान्त दिनांक 22.12.08 को पंचायत शिक्षक के पद पर कर दी गयी वादी द्वारा 2007 में माननीय उच्च न्यायालय में ही याचिका दायर किया गया था तथा पुनः 2009 में अपीलीय प्राधिकार में केस दायर किया गया जिसका वाद सं० 627/09 हैं। अपीलीय प्राधिकार द्वारा सुनवाई के पश्चात वाद सं० 627/09 खारिज कर दिया गया। वादी द्वारा माननीय उच्च न्यायालय में सी०डब्लू०जे०सी० सं० 15559/07 में पारित आदेश के आलोक में पूनः वाद दायर किया गया है।

इस प्रकार प्रखंड शिक्षा पदाधिकारी के प्रतिवेदन एवं जिला पदाधिकारी तथा जिला शिक्षा अधीक्षक के आदेश के आलोक में आवेदक

का नियोजन रद्द किया गया था तथा अपीलीय प्राधिकार द्वारा भी पूर्व में ही आवेदक के दावा को खारिज कर दिया गया। ऐसी स्थिति में इस पर पूर्ण विचार करने का कोई औचित्य प्रतीत नहीं होता है।

अतः वाद खारिज किया जाता है।”

This writ application, therefore, must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/-