

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7931 of 2019

Pankaj Kumar S/o Late Shambhu Sharan Singh Resident of Village- Aifni, PO- Aifni, PS- Ariyari, District- Sheikhpura, Bihar, Pin- 811105.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Secretary, Department of Education, Government of Bihar, Patna.
4. The District Magistrate (DM), District- Sheikhpura, Bihar.
5. The District Education Officer (DEO), District- Sheikhpura, Bihar.
6. The District Programme Officer (DPO), District- Sheikhpura, Bihar.
7. The Block Education Officer, Block- Ariyari, District- Sheikhpura, Bihar.
8. The Block Development Officer (BDO), Ariyari, Sheikhpura, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhishek Krishna Gupta, Adv.

For the Respondent/s : Ms Abhanjali, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL JUDGMENT

3 15-09-2025

Heard Mr. Abhishek Krishna Gupta, learned counsel for the petitioner and learned GA-12 duly assisted by Ms. Abhanjali, learned AC to GA-12.

2. Learned counsel for the petitioner has filed the instant writ application for payment of salary from the date of joining in terms of the judgment rendered by the Hon'ble Division Bench in Letters Patent Appeal No. 63 of 2014 *vide* order dated 01.09.2016.

3. It is the case of the petitioner that as against 18 vacant posts of Panchayat Teachers, the petitioner's appointment



under the Bihar Panchayat Primary Teacher (Appointment and Service Conditions) Rules, 2006 was made. Later, the petitioner's appointment was alleged to be illegal terming him to have wrongly entered into the service and accordingly, the claim of payment of salary was not made, since the date of joining. It is the case of the petitioner that he continued to discharge his duties on the post since initial joining made pursuant to the selection on the post of Panchayat Teacher. The petitioner further contends that in the case of other similarly situated persons, various enquiries were directed and termination orders in some cases were passed with respect to certain similarly situated persons, who had to approach the Appellate Authority, whose appeals were dismissed and against the order of Appellate Authority, writ petition was preferred, which was disposed of *vide* order dated 21.02.2013 passed in CWJC No. 935 of 2010 and the following order was passed:-

"The only reason why the District Teacher Employment Appellate Tribunal, Sheikhpura did not decide the lis was because a criminal case has already been filed, most of the records have been seized and are lying before the Judicial Magistrate for trial.

If the petitioners file all the relevant documents, which they have obtained as authentic copies under Right to Information Act, and they satisfy the requirements of their authenticity as well as help in adjudication of the issue raised, the Tribunal may endeavour



to re-look into the matter afresh and take a decision on the status of these petitioners. It is made clear that if any clarification is required on any document, that may always be got in from the court of concerned Judicial Magistrate.

Writ is disposed of with the above direction."

4. In view of the aforesaid order of remand passed by this Court to hear afresh, the Appellate Authority considered their cases and returned a finding *vide* order dated 27.08.2013, whereby it was held that in absence of documents, the Appellate Authority cannot take any decision and accordingly, on their appeals so filed pursuant to the remand by the Co-ordinate Bench of this Court, the said appeal was dismissed.

5. Being aggrieved by the said decision of the appellate authority dated 27.08.2013, the writ petition being CWJC No. 19201 of 2013 was again preferred by them, which stood dismissed. Consequent thereupon, Letters Patent Appeal No. 63 of 2014 was filed in which the stand of the appellants was that their appointments were made in the year 2006 but their services were terminated consequent to the order passed by the Block Development Officer, which order has been set aside. It is thereafter none of the authorities have found any illegality in the order of appointment of the appellants and the enquiry



into the appointment has not been concluded because of lack of documents, therefore, for lack of documents, the Appellants cannot be kept out of service. In this background, the Hon'ble Division Bench examined their cases and found that though the order passed by Block Development Officer was interfered with by the Appellate Authority but the Appellate Authority did not find any illegality in the process of the appointment of those appellants, may be for the reasons that the documents are not available. The facts remains that there is no finding in respect of illegal appointment of those appellants by the competent authorities i.e. the District Teachers Employment Appellate Authority. In absence of any such finding to keep the Appellants out of job, seems to be harsh and unreasonable.

6. Further, the Hon'ble Division Bench recorded the finding while interfering with the order that the learned Single Judge has found that no persons having lesser marks than the appellants were appointed and there is no factual basis to return such finding denying the relief besides there is no adverse finding as against those similarly situated persons, who are said to have been appointed on the post of Panchayat Teachers pursuant to the selection process initiated by the Selection Committee of the said Panchayat.



7. It is in that background, the order passed by the learned Co-ordinate Bench was interfered with and the appellants of Letters Patent Appeal No. 63 of 2014 were directed to be reinstated expeditiously within 15 days and payment of wages from the date of their reinstatement were directed.

8. Learned counsel for the petitioner submits that his case is on better footing because of the fact that the services of this petitioner was never terminated and he continued to discharge the duties on the post of Panchayat Teacher since the date of joining and, therefore, his case can also be considered in similar terms and similar benefits may also be directed to be extended if the case of the petitioner squarely falls within the parameters of the case, which has been adjudicated by the Hon'ble Division Bench in Letters Patent Appeal No. 63 of 2014.

9. Learned counsel for the petitioner next submits that in case of similarly situated persons of the same district who had approached this Court and had sought direction for payment of arrears of salary in the light of order dated 01.09.2016 passed in Letters Patent Appeal No. 63 of 2014, the Hon'ble Court *vide* order dated 14.02.2020 passed in CWJC No.



24491 of 2019 without going into the merits of the case disposed of the writ petition of those petitioners by directing the respondent to examine the case of those petitioners in the light of decision rendered in Letters Patent Appeal No. 63 of 2014 on 01.09.2016 and pass appropriate orders with regard to payment of salary to those petitioners within a maximum period of three months from the date of receipt/production of a copy of the order.

10. It has next been submitted that the petitioner has no reservation with regard to any enquiry undertaken by the respondents in similar terms as has been directed to be held in case of the appellants of Letters Patent Appeal No. 63 of 2014 and he is ready to co-operate with the enquiry so directed to be undertaken by the Respondents and in case if it is found that the claim of this petitioner is genuine, then necessary consequential order with regard to payment of salary may also be directed to be passed in favour of the petitioner without any inordinate delay.

11. On the other hand, learned counsel for the State takes this Court to the statement made in the counter affidavit specifically in paragraphs 10 and 11 wherein the allegations of wrong entry in service is alleged and as also the applicability of



benefits of judgment rendered by the Hon'ble Division Bench in Letters Patent Appeal No. 63 of 2014 has also been questioned.

12. In order to buttress their submissions, further argument has been advanced by the counsel for the State that the petitioner may not be allowed the benefit of the said judgment passed by the Hon'ble Court *vide* order dated 14.02.2020 passed in CWJC No. 24491 of 2019, in view of the fact that the petitioner was not a party in the said writ petition. Consequent thereupon, the Letters Patent Appeal No. 63 of 2014, which is said to have been adjudicated by the Hon'ble Division Bench.

13. This Court has considered the rival submissions and finds that the Hon'ble Division Bench has passed an order asking the respondents to undertake the enquiry with regard to verification of the documents, consequent thereupon, the appointment is directed to be made in respect to those Appellants, for which this petitioner is also ready to face such enquiry and furthermore, the petitioner's case is on a better footing for the simple reasons that the respondents themselves have allowed this petitioner to continue with his duties, right from the date of his initial joining given in the year 2018. Therefore, the arguments so advanced for rejecting the claim of this petitioner, would not lie good in their mouth. Because on



one hand, the respondents contend that the appointment of the petitioner is illegal, still no termination order has been passed in respect of the petitioner and the respondents have allowed the petitioner to continue on the post is sufficient enough to, *prima facie*, hold that no adverse material is found against this petitioner.

14. In view of the aforesaid, the argument that the appointment of the petitioner is illegal, cannot be accepted and is hereby rejected for the reason that the respondents cannot be allowed to approbate and reprobate as the said doctrine is a species of estoppel which lies in between “Estoppel by Records and “Estoppel in Pais”. “Estoppel in Pais” in legal parlance is also known as equitable estoppel or estoppel by conduct, is a doctrine that prevents a party from asserting a right or defense that is inconsistent with their prior/previous action or conduct.

15. Since this petitioner has been allowed to serve against the post without any hindrance, therefore, the respondents without disturbing the petitioner in any manner, are vested only with the liberty to verify his documents strictly in consonance with the direction issued in the Letters Patent Appeal No. 63 of 2014 and if the documents are found genuine and is eligible for payment of the respective amount of arrears



of salary from the date of initial joining, the same shall be calculated and be paid to this petitioner without any further delay but within the maximum period of three months from the date of production/receipt of a copy of this order.

16. With the aforesaid observation and direction, the writ petition stands disposed of.

(Ajit Kumar, J)

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