

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3236 of 2021

Nilima Kumari W/o Sri Late Ajay Kumar Ghosh, Resident of Naya Tola, P.O.
and P.S.-Banka, District-Banka, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Education, Government of Bihar, Patna.
4. The Director (Administration-Cum-the Additional Secretary, Department of Education, Government of Bihar, Patna.
5. The Director, Secondary Education, Department of Education, Government of Bihar, Patna.
6. The Joint Secretary-Cum-the Conducting Officer, Department of Education, Government of Bihar, Patna.
7. The Director, Secondary Education-Cum-the Presenting Officer, Department of Education, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

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| For the Petitioner/s | : | Mr. Sanjeev Kumar, Advocate Mr. Rajeev Shekhar, Advocate Ms. Abhanjali, Advocate |
| For the Respondent/s | : | Mr. Prabhakar Jha, GP-27 Mr. Umesh Narayan Dubey, AC to GP 27 |

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 03-01-2022

Heard Mr. Sanjeev Kumar, learned Advocate for the petitioner and Mr. Prabhakar Jha, learned GP-27 for the State.

The petitioner has challenged the order dated 31.08.2020 contained in Memo No. 339 whereby she has been dismissed from service under Rule 14(xi) of the Bihar



Government Servants (CCA) Rules, 2005 as also against the order passed in appeal, upholding the order of dismissal.

The only charge against the petitioner is that her appointment as Matric Trained Teacher in a school way-back in the year 1983 was sans the rules, as there was no roster clearance and there was no advertisement for filling up such post. On this solitary charge, the petitioner was put to a departmental proceeding.

Be it noted that a CBI inquiry had been held in the matter of illegal appointment of the petitioner, pursuant to a PIL petition before this Court.

The learned counsel for the petitioner has informed this Court and that also without any demur from the counsel for the State that in the inquiry conducted by the CBI, it was found that the appointment of the petitioner was beyond the rules.

The appointing authority *viz.* the District Inspectress of the Schools may have had the competence



to appoint teachers under the Bihar Education Service Code but without any advertisement for filling up any vacant posts, such appointments could not have been made.

Mr. Kumar has further informed this Court that except the filing of such charge report that the appointment of the petitioner was not in accordance with the rules, nothing happened thereafter. Neither the petitioner nor the appointing authority were put to any criminal charge of conspiracy in obtaining an appointment through back-door. The petitioner continued to remain in service for about 30 years and during the above period that she served as a teacher, she was promoted also.

The petitioner is shortly to superannuate.

The major ground of challenge to the order of dismissal is that the documents which were demanded by her for an effective representation were not supplied to her. The only document which perhaps would have helped her frame the answer to the poser *viz.* the charge report of



the CBI, was not made available to her. With about three decades of having served in the department and having got promotion in the service also, the petitioner was absolutely sanguine that her appointment has been vindicated as no sequel action was taken after the submission of the charge report.

Learned counsel for the petitioner reiterates that assuming but not admitting the fact that there was no roster clearance for such appointment, she could not have been saddled with any charge as the responsibility for the same was in the domain of the appointing authority.

He has further submitted that the appointment was made by a competent person and only after the post was advertised. It appears from the charge memo that the advertisement did not have regular pattern. The post appears to have been advertised by inscribing it on the black-board put in front of the office of the District Inspectress of School.



Mr. Prabhakar Jha, learned Advocate for the State has submitted that *prima facie* such advertisement is no advertisement in the eyes of law. An advertisement is meant to disclose information to aspirants in general about the vacancy and the prospective procedure which would be adopted for filling up such vacancy. That the vacancy was advertised only by inscribing it on a blackboard kept in front of the office of the appointing authority is no invitation in the eyes of law to desirous people to apply for the post.

Apart from this, it has been contended on behalf of the State that no doubt the petitioner has not been charged with any conspiracy for obtaining appointment in an unauthorized manner but the fact remains that her appointment was not in accordance with the rules and therefore the same cannot be saved/protected by taking resort to the argument that the provisions under the *Bihar Government Servants (Classification, Control & Appeal)*



Rules, 2005 has not been strictly adhered to in the departmental proceeding.

As opposed to the aforesaid contention on behalf of the State the counsel for the petitioner has reiterated that in the absence of the report of the CBI having been made available to her, it was not at all convenient for her to have answered to the charge that the advertisement and the appointment thereafter was irregular.

According to the learned counsel for the petitioner, all that the petitioner can contend is that she was qualified at the time of her appointment as a Matric Trained Teacher. The appointing authority also had the competence to appoint her. The only question which therefore remains is that the appointment process had not been fair as there had not been any advertisement nor had there been roster clearance.

Assuming but not admitting these two facts to be correct, the charge for the same cannot be saddled on the



petitioner in the absence of any accusation of conspiracy with the appointing authority for obtaining appointment.

Since there is no charge with respect to such ingredient, which stands further vindicated by the fact that no criminal case was initiated against the petitioner, the petitioner would, according to the argument of the learned counsel, be justified in raising the plea that even with respect to demonstrating that the appointment was fair and had been made only after observance of rules; it could have been effectively done only if the CBI charge report would have been made available to her.

There is no justification, it has been argued, for not handing over the aforesaid charge report. There is nothing on record also to indicate that the petitioner was the sole person who was interviewed before being appointed.

No doubt the petitioner did not offer any evidence in support of the contention that her appointment was regular but the primary job of proving that the



appointment was not regular was on the authority concerned.

The respondents have not chosen to proceed against the appointing authority which also is an indicator of malafides in passing on the buck to the appointee and giving undue protection and patronage to the appointing authority.

The last of the arguments urged on behalf of the petitioner is that in view of violation/breach of Rule 17 (3) (II) (B) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the principle of *injuria sine damnum; sine damnum injuria shall apply*.

Had the petitioner known the contents of the charge report, perhaps her defence before the disciplinary and appellate authorities would have been different.

A perusal of the orders passed by the disciplinary authority as well as the appellate authority reflects that there has been a complete non-application of mind.



None of the aforesaid authorities have taken care to find out as to the action taken against the appointing authority when such singular/solitary appointment was made of the petitioner some three decades ago. What was the charge in the CBI investigation is also not known. None of the authorities, therefore, displayed the curiosity to know about the background of initiation of the departmental proceeding against the petitioner.

Merely stating that no evidence has been brought forth on behalf of the petitioner to prove her defence is no application of mind. The authorities have not at all addressed themselves to the issue that the main document which could have helped the petitioner in explaining away the circumstance appearing against her, was not made available to her.

There could be no justification, in the opinion of this Court, to avoid giving the charge report of the CBI which is the basis for initiating the departmental proceeding against the petitioner. No doubt, the tenor of



the departmental proceeding is not geared towards saddling the petitioner with any charge of obtaining an appointment by collusive means, but considering the fact that the entire proceeding was initiated on the basis of a CBI inquiry, the report of which has not been provided to the petitioner, the orders impugned appear to be vitiated and lopsided.

The orders passed by the disciplinary authority as well as the appellate authority are therefore set aside.

While saying so, this Court has taken note of the principles summarized in *Kranti Associates Pvt. Limited & Anr. vs. Masood Ahmed Khan & Ors.* reported in (2010) 9 SCC 496. Paragraph 47 of the judgment referred to above is being extracted herein below for ready reference:

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.



(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts.



This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.



(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving



reasons for the decision is of the essence and is virtually a part of "due process".

For the paucity of reasons in both the orders impugned, those cannot be sustained in the eyes of law and are set aside.

The application is allowed but with the caveat that the respondent would provide the inquiry report of the CBI to the petitioner and permit the petitioner to file a response to the aforesaid documents and then the disciplinary authority shall pass a fresh order in accordance with law.

The entire exercise must be completed within a period of three months from the date of production of a copy of this order before the concerned authority.

During this period, the petitioner shall not be reinstated in service nor would she be afforded any fiscal benefit.

The respondent authorities shall also consider subjecting the appointing authority to a departmental proceeding, as if the appointment process was vitiated



because of the same not being in consonance with the rules in that regard, equal responsibility would lie on the appointing authority as well.

With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

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