

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6581 of 2020

Md. Faisal Ahmad Son of Late Masroor Ahmad, Permanent Resident of Village- Bari Borna, P.O. Borna, P.S.- Khagria Presently residing at Birauli College Campus, P.O. R.I. Birauli, P.S. Pusha, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Joint Secretary, to the Government, Department of Education, Bihar, Patna.
4. The Director, Higher Education, Department of Education, Government of Bihar, Patna.
5. The Rural Institute of Higher Studies Birauli, P.O. R.I. Rural Birauli, P.S. Pusha District-Samastipur through its Chairman.
6. The Governing Body of Rural Institute of Higher Studies, Samastipur, through its Chairman.
7. The Education Minister, Department of Education Government of Bihar-Cum-Chairman Rural Institute of Higher Studies, Birauli, Samastipur at Present New Secretariat, Patna.
8. Vinod Kumar Suman, Son of Ranjendra Prasad Singh, Presently Posted as Director Rural Institute of Higher Studies, P.O. R.I. Birauli, P.S. Pusha, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate
For the Respondent/State : Mr. Subash Chandra Mishra, SC 16
Mr. Shashi Bhushan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 29-03-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“That this is an application for issuance of a writ in the nature of Quo warranto directing the respondents to removed the respondent no. 8 from the post of Director of the Rural Institute of Higher



Studies, Birauli, Samastipur forthwith as he has been holding the post illegally being appointed by authority having no jurisdiction apart from other illegalities in his appointment and to quash the notification as contained in memo No. 884 dated 19.05.2016 issued by the Joint Secretary to the Government, Department of Education Bihar under the order of the Hon'ble Governor by which respondent no. 8 has been appointed.”

3. Eighth respondent was a candidate for recruitment to the post of Director of the Rural Institute of Higher Studies, Birauli, Samastipur. Among others he was a candidate. The method of recruitment to the aforesaid post reads as under:

“Appointment. - (a) *Director of the Institute-*

(i) *Pay – The pay and other allowances of the Director of the Institute shall be at par with other officers in Bihar Education Service Class-I as per decision of the State Government, but he/she shall not be a Government servant, since the Institute is an autonomous body.*

(ii) *Appointment to the post of Director: - For the regular appointment to the post of Director of the Rural Institute Birauli a selection committee shall be constituted by the Chairman of the Institute consisting of the following: -*

(a) *Principal Secretary, Education Department/Special Secretary (Higher Education) - Chairman*

(b) *Director, Higher Education - Member*

(c) *Teacher not below the rank of Professor nominated by the Chairman of the Institution -Member*



(iii) The Selection Committee shall recommend the names of three to five suitable persons alphabetically to the governing body for the appointment to the post of Director of the institute. The governing body may appoint any of the recommended persons to the post of Director.

(iv) The following shall be the minimum qualification/conditions for the appointment to the post of Director of the institute:-

(a) Post Graduate Degree with 55% marks in any of the subjects being taught in the institute.

(b) Ph.D. degree is essential.

(c) Teaching experience of a minimum of 10 (ten) years in any University/College/Rural Institute is essential.

(b) Teachers of the Institute:- (i) Pay Scale – The pay and other allowances of the teachers of the Institute shall be at par with other officers in Bihar Education Service Class – II as per decision of the State Government, but he/she shall not be a Government servant, since the Institute is an autonomous body.”

4. The process of selection for the aforesaid post was completed. For further action in respect of appointment governing body was authorized to issue order of appointment. In other words, appointing authority to the aforesaid post is governing body. Annexure 2 dated 09.01.2015 reads as under:

Underline Emphasized



Annexure- 2

बिहार सरकार

शिक्षा विभाग

पटना, दिनांक 2015

अधिसूचना

संख्या 15 / व 3-97/98 / राज्य सरकार की अधिसूचना संख्या 527 दिनांक 07.05.1980, 882 दिनांक 05.10.1982, 1180 दिनांक 22.06.2006 एवं 1104 दिनांक 14.07.2009 के क्रम में ग्रामीण प्रतिष्ठान बिरौली समिति, समस्तीपुर के समुचित कार्य संचालन हेतु ग्रामीण प्रतिष्ठान (बिरौली) समिति के नियमावली 1961 की धारा 3 के अनुसार राज्य सरकार ने इस समिति के पुनर्गठन करने का निर्णय लिया है। इस समिति में निम्नांकित सदस्य होंगे :-

पदेन सदस्य

1.	मंत्री, शिक्षा विभाग	अध्यक्ष
2.	विकास आयुक्त, बिहार	सदस्य
3.	आयुक्त, दरभंगा प्रमंडल	सदस्य
4.	वित्त आयुक्त, बिहार	सदस्य
5.	कृषि उत्पादन आयुक्त, बिहार	सदस्य
6.	प्रधान सचिव, शिक्षा विभाग, बिहार	सदस्य
7.	आयुक्त उद्योग विभाग, बिहार	सदस्य
8.	निदेशक, ग्रामीण प्रतिष्ठान, बिरौली	सदस्य सचिव

मनोनीत सदस्य

1. श्री अशोक कुमार, माननीय सदस्य, बिहार विधान सभा, वारिसनगर सदस्य विधान सभा क्षेत्र।
2. श्रीमती मंजु कुमारी, माननीय सदस्य, बिहार विधान सभा, कल्याणपुर सदस्य विधानसभा क्षेत्र।
3. श्री कृष्ण केशव प्रसाद सिन्हा, पूर्व निदेशक, ग्रामीण प्रतिष्ठान सदस्य बिरौली, समस्तीपुर

2. सदस्यों की सदस्यता की अवधि आदेश निर्गत की तिथि से तीन वर्षों के लिए अथवा अगले आदेश तक के लिए जो भी पहले हो, होगी।

बिहार राज्यपाल के आदेश से

ह0/-

(सुनील कुमार सिंह)

सरकार के संयुक्त सचिव

5. Undisputedly, 8th respondent was not appointed by the governing body, on the other hand, order of appointment has been



issued by the Education Department. The aforesaid infirmity has not been disputed by the respondents. In fact, the State counsel Mr. Subhash Chandra Mishra submitted on instruction and perusal of the records that there is a non compliance to the procedure to the extent that governing body has not appointed the 8th respondent to the post of Director of the Rural Institute of Higher Studies, Birauli, Samastipur.

6. The 8th respondent's counsel submitted that the petitioner's interest is to oust the 8th respondent and is not in public interest or really in the sense that there are lacunae in the process of appointment. It is alleged that petitioner was blackmailing the 8th respondent and demanding certain monetary gain in order to avoid the present litigation. Irrespective of the aforesaid issue, crux of the matter is that the petitioner was not appointed by the competent authority namely a governing body. In respect of alleged allegations levelled by the 8th respondent on the petitioner, the 8th respondent had a remedy before the appropriate forum like approaching the office of the Bihar Lokayukta or in lodging police complaint. Therefore, the 8th respondent cannot take shelter on the alleged allegations that the petitioner was demanding certain amount in respect of not filing the present petition and other issues are concerned.



7. In view of the aforesaid submission made by the learned counsels for the respective parties it is undisputed that 8th respondent was not appointed by the governing body. Thus, it is clear case of usurping the power by the Education Department and stepping into shoes of the governing body as if Education Department is the appointing authority to the post of Director of the Rural Institute of Higher Studies, Birauli, Samastipur. Therefore, petitioner has made out prima facie case to interfere with order of appointment of 8th respondent.

8. Hon'ble Apex Court in the case of ***Dhananjay Reddy vs. State of Karnataka*** reported in (2001) 4 SCC 9, it is held as under:-

“23. It is settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in the State of Uttar Pradesh vs. Singhara Singh and Others reported in 1964 AIR SC 358 held that:

“A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession has obviously been given so that the confession might be proved by the record of it made made in the manner laid down.”

9. In the judgement in ***T. Ramamoorthy vs. The Secretary, Sri Ramakrishna Vidyalaya High School, Tirupparaithurai,***



Tiruchirapalli District and Others, 1998 (4) L.L.N. 876, in paragraph 6 it is held as under:

“This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that other method of performance is necessarily precluded, is not only well settled but squarely applied to this case also in construing the scope of the power as also its exercise by the management by under Section 22 of the Act.”

10. In ***Captain Sube Singh and Others vs. LT. Governor of Delhi and Others, 2004 6 SCC 440***, paragraph 29, it is held as under:

*“In **Anjum M.H. Ghaswala (CIT v. Anjum M.H. Ghaswala, 2002 1 SCC 633)** a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.(See also in this connection **Dhanajaya Reddy v. State of Karnataka, 2001 4 SCC 9**). The statute in question requires the authority to act in accordance with the rules of variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof.”*

11. In ***State of Jharkhand and Others vs. Ambay Cements and Another, 2005 (1) CTC 223***, paragraph 26 reads as under:

“Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe



consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent therein.”

12. In the light of the principle laid down supra, the Education Department is not the competent authority to appoint 8th respondent to the post of Director of Rural Institute of Higher Studies, Birauli, Samastipur. Apex Court in the case of ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Others*** reported in **(2014) 1 SCC 161 (Paragraph 21 and 22)** also held that writ of Quo warranto is maintainable if there are procedural lapses or a person who has been appointed or occupying a public post on account of lack of qualification and other eligibility criteria. In the light of these facts and circumstances the petitioner has made out a *prima facie* case to interfere with the order of appointment issued to the 8th respondent in seeking a writ of Quo warranto.

13. Accordingly, order dated 19.05.2016 stands set aside, reserving liberty to the competent authority to proceed in accordance



with law in order to fill up the post of Director of the Rural Institute of Higher Studies, Birauli, Samastipur.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	05.04.2022
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