
(2014) 04 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 2882 of 2013

Faiyaz Alam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2015) 1 PLJR 733

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Bam Bahadur Jha, Advocates for the Appellant; Kumari Amrita, Advocates for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties is with regard to the following relief prayed in this writ application:--

"That, this writ application is directed against the order issued by the District Education Officer, Katihar, to respondent Block Education Officer, Katihar; to respondent Block Education Officer vide his letter No. 3305 (Annexure-1) dated 10.9.2012, whereby and whereunder the respondents District Education Officer, Katihar has been pleased to direct the respondent Block Education Officer, Balrampur to institute criminal case against the petitioners and to intimate proceeding for recovery of the remuneration amount, while cancelling the selection of the petitioners mechanically ignoring the show cause filed by the petitioners. In the show cause the petitioners have enumerated that on the objection of the petitioners the revised marks were issued after due executing. In the show cause filed by the petitioners, it has further been stated that on the basis of the revised marks, the petitioners were admitted at Primary Teachers Training College, Tikapatti in the year 1988-89 Sessions. The said admission was based on the revised marks which has been tested by this Hon"ble Court in C.W.J.C. No. 6338/89. Even though the entire fact and documents were supplied by the petitioners, impugned order dated 10.9.2012 is issued in arbitrary and

capricious manner; solely to victimize the petitioners, due to the reasons best known without considering the fact that, the petitioners have been appointed on regular pay scale as trained teacher appointment made on the direction of the Hon"ble Apex Court. This writ application is also directed against the consequential letter issued by the respondent No. 4 (D.E.O.) to the Station House Officer, Balrampur Police Station contained in letter No. 507 dated 1.10.2012 to institute the criminal proceeding against the petitioners.

The writ application is also being filed to restrain the respondent to give effect to the order dated 10.9.2012 and the order dated 1.10.2012."

In the considered opinion of this Court, the impugned order which is sought to be assailed by the petitioners of this writ application being only a direction by the superior authority to lower authority for lodging of First Information Report against the petitioners or to make recovery of the salary drawn by the petitioners on account of their being based on forged and fabricated documents does not suffer from any error.

2. Lodging of First Information Report is the requirement of Section 154 of the Code of Criminal Procedure. If a superior authority has found that the petitioners have committed certain offence in obtaining their appointment by way of producing forged/fake certificates, action can be definitely taken by lodging of the FIR. So far the issue relating to recovery of the amount already drawn by the petitioners is based on their appointment due to production of forged/fake marksheet, the petitioners have not been circumscribed to pay, inasmuch as, there is also a direction that if such amount cannot be recovered from the petitioners for any reason, a proceeding under Bihar & Orissa Public Demands Recovery Act, 1914 should be initiated. Section 6 of the Bihar & Orissa Public Demands Recovery Act, 1914, explains that:--

"On receipt of any such requisition the certificate officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due and shall include in the certificate the fee if any paid under Section 5, sub-section (2); and shall cause the certificate to be filed in his office."

3. For the moment, this Court would find that the petitioners had produced their marksheet in course of verification after their appointment and when those marksheets were sent to the institution namely, Bihar Madarsa Education Board and its report was given which gave the employer the satisfaction that the marksheets which were produced by them were forged and therefore the consequence which could follow thereafter i.e. initiation of criminal proceeding or recovery of the amount will therefore, be entirely depending on the fact of the petitioners continuation in service. The petitioners have already been to be a Panchayat Teacher and they are being now subjected to either criminal proceeding and/or recovery of the amount by the authority.

4. In view of the above, this Court would direct the concerned authority to

examine as to whether those certificates and marksheets were taken into consideration for appointment of the petitioners against 34540 post of teachers sought to be filled up in terms of Advertisement No. 210 of 2010.

5. The plea that the principle of natural justice were not followed before passing of the aforementioned order initiating criminal proceeding or proceeding under Bihar & Orissa Public Demands Recovery Act, 1914 has to be also noted for its being rejected. The action of lodging of FIR did not require any show cause notice. In any event when the petitioners themselves have not produced the marksheet in the writ application on the basis of which they have secured their appointment, they cannot be heard to say that the finding recording directing lodging of FIR and to proceed under Bihar & Orissa Public Demands Recovery Act, 1914 does not suffers from any error. Added to it as and when a certificate proceeding is initiated against them they will have an opportunity to file their objection under Section 7 of the Bihar & Orissa Public Demands Recovery Act, 1914 and if aggrieved by an order of Certificate officer they can also take recourse to Sections 60 and 62 of the aforesaid Act. With the aforementioned observation and direction, this application is disposed of.