

(2014) 05 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13356 of 2013

Md. Maroof Azam and Sunil Kumar Paswan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2014) 05 PAT CK 0041

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Radha Mohan Pathak, Advocate for the Appellant; Yogendra Pd. Sinha, AAG-15, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. In this writ application two petitioners have assailed an inquiry report dated 04.09.2009 as contained in Annexure-20 to this writ application and to that extent, it would be relevant to quote relevant portion of the prayer of the petitioners in this writ application which reads as follows:-

for issuance of an appropriate writ/order/direction quashing the enquiry report dated 04.09.2009 which is a nullity in the eyes of law and consequently the Respondents be directed to pay the arrears of salary of the petitioners with interest.

3. Learned counsel for the petitioners in this regard has submitted that the petitioners initial appointment on the post of Panchayat Shiksha Mitra having been made on 10.04.2003 and they having been continued on such post of Panchayat Shiksha Mitra till 01.07.2006 had stood absorbed on the post of Panchayat Teacher and therefore either the denial of payment of salary to them or an adverse inquiry report dated 04.09.2009 holding their appointment and continuation as a Panchayat Shiksha Mitra/Panchayat Teacher to be bad and thus

entitled for payment for salary cannot be sustained either on fact or in law.

4. Learned counsel for the State on the other hand has submitted that earlier the writ application was filed exactly for the same relief i.e. for payment of salary to the petitioners being C.W.J.C No. 11660 of 2009 and when a counter affidavit was filed enclosing the copy of the inquiry report, the petitioners had withdrawn the writ application with a liberty to assail the findings in the impugned inquiry report dated 04.09.2009. According to counsel for the petitioner, the relief of payment of salary, therefore, cannot be re-agitated in this writ application.

5. This Court would not like to dispose of the matter on a technical ground and would examine the claim of the petitioners as to whether they were continuing as a Panchayat Shiksha Mitra as on 01.07.2006 so as to be given the benefit of absorption on the post of Panchayat Teacher in terms of Rule-20(iii) of Bihar Panchayat Teacher Appointment Rules-2006 (hereinafter referred to as the 2006 Rules). It is not in doubt that the petitioners were working as Panchayat Shiksha Mitra on the basis of their engagement on 10.04.2003 as their such engagement was only for a period of 11 months and therefore, their claim that they were further engaged on the post of Panchayat Shiksha Mitra by way of first extension on 12.04.2004 and were given second extension on 09.04.2005 will depend on the order of their extension/re-appointment on the post of Panchayat Shiksha Mitra.

6. Unfortunately, the documents which have been brought on record in Annexure-1, 2 and 2/A at best lead to continuation of service of the petitioners till 09.03.2006, inasmuch as, the first letter of appointment for a period of 11 months is 12.04.2003 and the last one is dated 09.04.2005. In fact there is nothing on record to show that after completion of the period of 11 months from the date 09.04.2005, they were ever granted any extension. Let it be also made clear that the maximum extension that a Panchayat Shiksha Mitra could have been given under the policy of 2002/2004 was for a period of 33 months. Thus in absence of any order on record that the petitioners were granted extension after 09.03.2006 when the period of 11 months was completed by the petitioners, this Court will have no hesitation in holding that the petitioners were never absorbed on the post of Panchayat Teacher, inasmuch as, the requirement of Rule-20(iii) of 2006 Rules was quite specific that only those Panchayat Shiksha Mitra who were working as on 01.07.2006 could get the benefit of automatic absorption on the post of Panchayat Teacher.

7. It is this aspect of the matter that the petitioners themselves have raised in their representation filed to the various authorities complaining that their payment of salary was not being made from April-2006. As a matter of fact the District Superintendent of Education, East Champaran in his report to the Collector of East Champaran had also mentioned that the payment of remuneration to the petitioners was not being made since April-2006 as would be evidenced from reading of Annexure-7. True it is that the Collector who had no power as with regard to appointment or deciding the service condition of a

Panchayat Teacher had sought to make some recommendation for payment of salary to the petitioners but the fact remains that the petitioners were not paid their salary despite repeated instructions of the Collector of the district.

8. The impugned inquiry report in fact was a creation on the repeated representation filed by the petitioners for payment of their salary and when the Collector of the district found that his orders being issued to the Panchayat for payment of salary to the petitioners were being not complied and the Block Education Extension Officer also could not make the payment of salary to the petitioners, it was under the orders of the Collector of East Champaran district that a three man Committee was constituted consisting of District Welfare Officer, District Superintendent of Education and the National Saving Officer. The Committee in presence of the petitioners had found that though it was true that the petitioners were initially engaged on the post of Panchayat Shiksha Mitra but their services were ultimately terminated on 27.01.2006 after following the prescribed procedure. To that extent, it would be relevant to quote the findings of the three man Committee:-

9. It has to be kept in mind, that the Committee in its report has gone on all possible defence which has been sought to be raised also in this writ application but it has found that the appointment of the petitioners on the post of Panchayat Shiksha Mitra had already been terminated in the month of January-2006 itself and therefore, they were not continuing in service as on 01.07.2006 and this decision taken by the employer of the petitioners namely, the Panchayat which was well within their jurisdiction could not be interfered.

10. In view of the above, the submission of learned counsel for the petitioner that there was an alternative finding for the payment of salary because the Headmaster of the School had taken work from the petitioners and as such the payment of salary should be made to the petitioners after deducting the amount of salary from the salary of the Headmaster has to be also rejected for a simple reason that the Headmaster was found to be in hand in glove with the petitioners as would be apparent from following extract of the report of the Committee:-

11. As would be apparent, the finding of the Committee is that the petitioners were aware of the termination of service and so was the Headmaster but both of them were trying to help each other. This Court, therefore, cannot issue a writ of mandamus for making payment of salary to the petitioners for which their first writ application being C.W.J.C No. 11660 of 2009 did not bear any fruitful result. As a matter of fact, after such liberty was given to the petitioners to assail three man Committee report which was produced by the respondents in the counter affidavit of C.W.J.C No. 11660 of 2009 filed by the petitioners they ought to have assailed their order of termination passed by the Panchayat in its meeting held in the month of January-2006 by a resolution dated 27.01.2006. That resolution in fact has not been assailed even in this writ application.

12. As a matter of fact, once this aspect becomes clear that the petitioners

services were already terminated by the Panchayat on 27.01.2006, they would be neither entitled for payment of salary nor for absorption on the post of Panchayat Teacher. As noted above, even if the petitioners had assailed their order of termination of service dated 27.01.2006, they could not have been reinstated on the post of Panchayat Teacher because of the prohibition imposed under Rule-20(iii) in terms of 2006 Rules and abolition of the post of Panchayat Shiksha Mitra w.e.f., 01.07.2006. It is this aspect of the matter which has been already settled by a Division Bench of this Court in the case of Smt. Renu Kumari Pandey Vs. The State of Bihar and Others, , which has also been affirmed by the Apex Court in SLP No. 3303 of 2011 preferred against the said order. This aspect of the matter has also been explained by the learned Single Judge in the case of Dayanand Yadav and Another Vs. The State of Bihar and Others, , relevant portion whereof reads as follows:-

Considering the submission of the parties, it appears that in the case reported in Smt. Renu Kumari Pandey Vs. The State of Bihar and Others, , as also the Single Bench Judgment of this Court in the case of Saroj Kumar and Others Vs. The State of Bihar and Others, , the issue as to whether irregularities, if any, committed in engaging the Shiksha Mitra would be a subject matter of consideration by the appellate authority constituted under Rule 18 of the aforesaid Rules was considered. This Court held that the appellate authority cannot exercise his jurisdiction with respect to the irregularities, if any in the enrollment of the persons who were earlier engaged as Shiksha Mitra and the matter cannot be reopened after they acquired status of Panchayat Teacher and as such, any omission or commission on the part of these petitioner can (sic-not) be subject matter of consideration by the appellate authority under Rule 18 of the aforesaid rules.

13. Thus, in view of the judgment of Renu Kumari Pandey (supra), the petitioners cannot claim salary for the period from 01.07.2006 onwards as their services were never absorbed on the post of Panchayat Teacher.

14. The petitioners who in fact as per the resolution of the Panchayat are out of service since 27.01.2006, even otherwise cannot claim payment of their salary as their so called continuation after 27.01.2006 was also illegal. It is this aspect of the matter which has been decided by a Full Bench of this Court in the case of Rita Mishra Vs. State of Bihar & Ors. reported in 1987 BBCJ 701 which has been also approved by the Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, wherein it was held that:-

15.....Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final The position, therefore, is that the

appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah v. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar*. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal

appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.

(underlining for emphasis)

15. Thus, in view of the aforementioned authoritative pronouncement of the Apex Court approving the judgment of the Full Bench of this Court, it has to be held that the petitioners' claim for payment of salary is wholly misconceived.

16. As noted above, this Court does not find any error in the three man Committee report which only takes into account the factual scenario which was prevailing as with regard to so called claim of the petitioners of continuing on the post of Panchayat Shiksha Mitra and absorption on the post of Panchayat Teacher.

17. As a matter of fact, such inquiry report came to be filed only because the petitioners were repeatedly claiming payment of salary by way of filing representation before the Collector of the district and has therefore, to be viewed

only in the context it was filed. The gist of inquiry report is that the services of the petitioners on the post of Panchayat Shiksha Mitra were already terminated on 27.01.2006 and thus they were not entitled for payment of salary. As noted above, that order was never questioned by the petitioners even after they became aware of it and therefore, their claim for either continuation in service or payment of salary must come to an end.

18. That being so, this application is wholly misconceived and is, accordingly, dismissed.