
(2015) 02 PAT CK 0058

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 795 of 2013

Murshid Alam

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 02 PAT CK 0058

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Gautam Kumar Yadav, for the Appellant; Sumant Kumar Singh, A.C. to G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—This case has already been dismissed by an order of this Court dated 21.1.2014 which reads as follows:--

"Heard learned counsel for the parties.

At the outset, learned counsel for the petitioner had wanted this case to be adjourned for awaiting the result of MJC No. 280 of 2012.

This Court, having examined the nature of order dated 27.9.2011 in CWJC No. 16967 of 2011 out of which the aforesaid contempt application, MJC No. 280 of 2012 arises, does not feel any necessity to adjourn the hearing of this case as nothing actually would turn on the outcome of the contempt application so far it relates to the result of this writ application.

In the present case, the order of the competent authority cancelling the very appointment of the petitioner on the post of Teacher in a Basic school is in question whereas the subject matter of the aforesaid writ application, namely, CWJC No. 16967 of 2011 disposed of on 27.9.2011 and the resultant contempt application, MJC No. 280 of 2012, is totally confined to the claim of promotion of

the petitioner on the basis of his being a validly appointed teacher in a basic school. Thus, in the considered opinion of this Court, the result of this writ application may have an important bearing on the outcome of the pending contempt application but vice versa is not true.

This Court, therefore, has also heard learned counsel for the parties on merit of the case and does not find any flaw in the impugned order passed by the competent authority which is not only a speaking order but also takes into account all the relevant facts and law including the impact of observations and directions given by this Court in the earlier three writ petitions and two contempt applications filed by the petitioner.

This Court, therefore, must hold the present writ application to be wholly without merit. It is, accordingly, dismissed and the reasoned order, in support of the aforesaid conclusion of dismissal of this writ application, shall follow on production of the records of CWJC No. 11755 of 2001, CWJC No. 7886 of 2002, MJC No. 3047 of 2005, CWJC No. 16967 of 2011 and MJC No. 280 of 2012."

2. At the outset, let it be noted that the records of CWJC No. 11755 of 2001, MJC No. 3047 of 2005, MJC No. 280 of 2012 and CWJC No. 16967 of 2011 was made available to this Court by the office only on 19.12.2014 whereas the records of CWJC No. 7886 of 2002 was made available on 7.1.2015 and this Court, having perused all of them, is now recording its reasons.

3. The prayer of the petitioner in this writ application reads as follows:--

"(a) To quash the order vide memo No. 283 dated 7.4.2012 issued under the signature of Regional Deputy Director Education Magadh Division, Gaya whereby and whereunder the service of the petitioner has been terminated from the date of issuance of the order.

(b) To stay the order vide memo No. 283 dated 7.4.2012 issued under the signature of Regional Deputy Director Education.

(c) To quash the letter vide memo No. 1371 dated 6.6.12 issued by Director (Administration) cum Additional Secretary Education Department Government of Bihar, Patna whereby and whereunder the claim of promotion of petitioner has been rejected without assigning any reason.

(d) To grant all consequential benefit to the petitioner after quashing both the aforesaid order vide memo No. 283 dated 7.4.2012 and order vide memo No. 1371 dated 6.6.12."

4. Learned counsel for the petitioner, in support of the aforementioned prayer, has basically concentrated on the aspect that the impugned orders, terminating the services of the petitioner from the post of Assistant Teacher in the government Basic school, Sherghati, is bad both on fact and in law primarily because the respondents have gone to question the events of the year 1988 for holding the appointment of the petitioner to be bad. According to him, the long

continuation of the petitioner on the post of Assistant Teacher for more than 24 years by itself would be an important factor to be taken into consideration in determination of the right of the petitioner to continue against the said post as also the consequential benefit of promotion in the cadre of teachers of Basic school.

5. Learned counsel in this regard has also submitted that the impugned order in fact has been also passed by way of vengeance and retaliation because there was a direction of this Court to consider the case of promotion of the petitioner and when it was not done and the petitioner had filed contempt application, MJC No. 280 of 2012, the respondents have passed the impugned orders to defeat the directions given by this Court in the order dated 27.9.2011 in CWJC No. 16967 of 2011. It was for this reason that the learned counsel for the petitioner had prayed for awaiting the disposal of the pending contempt application, MJC No. 280 of 2012.

6. On the other hand, learned counsel for the State while supporting the impugned order had submitted that the appointment of the petitioner on the post of Assistant Teacher in Basic school was void ab initio and in fact the petitioner has been trying only to continue on the said post of Assistant Teacher by filing one after another writ application and contempt application and thus disabling the authorities to take a final decision. In this regard, he explains that when the last order dated 27.9.2011 was passed in CWJC No. 16967 of 2011 for examining the claim of the petitioner for his promotion in the cadre of teachers of Basic school, the respondents had examined every thing at length and the impugned order, by denying the promotion to the petitioner, has been passed while holding that very appointment of the petitioner on the post of Assistant Teacher in a Basic school was bad and in fact void ab initio and as such he could not continue on the said post of teacher much less claim promotion.

7. In order to decide the validity of the impugned order dated 7.4.2012 and the consequential order dated 6.6.2012, it thus would be first necessary to take certain relevant facts into consideration. It is not in dispute that the petitioner was initially appointed as a Peon in the office of District Education Officer (D.E.O.) on 23.3.1976 under the 1974 Rules authorizing the Regional Deputy Director of Education (in short "R.D.D.E.") to appoint Clerk and Peon for the administrative offices of the office of District Education Officer, District Superintendent of Education, Sub-Divisional Education Officer etc. Thus, the petitioner was appointed in the year 1976 in the closed cadre against the post of Peon which had no promotional post save and except the post of Clerk.

8. It is in fact a matter of mystery as to how the petitioner subsequently under an order dated 28.7.1976 got confirmed on the post of Peon in Zila School which is definitely not the cadre post of a Peon appointed initially for the administrative offices of D.E.O., Gaya. The teaching and non-teaching posts of Zila School are governed by the separate rules. It is in this background that this Court has to also examine the manner of appointment of the petitioner on the post of a

Teacher in Basic school on 30.12.1989.

9. Let it be noted that the petitioner was only a matriculate in 1976 and is said to have passed his B.A. examination in 1981, his teachers training course examination in 1985 and his post graduation in 1987. It has to be kept in mind that all these courses and examinations were completed by the petitioner while continuing to work as a Peon in Zila School.

10. In this regard, this Court has found from the records that the petitioner on 22.6.1987 had filed an application for appointment on the post of Teacher and on that the then Cabinet Minister on 2.7.1987 had made an endorsement to Director, Secondary Education that if there be any rule for a qualified Peon to be interviewed, a suitable order may be passed. This becomes more clear from reading of the application dated 22.6.1987 of the petitioner and the order of Minister dated 2.7.1987 which reads as follows:--

11. It is a matter of record that there was no such Rule and therefore no action was taken for next two years either by Director or any one else in next two years but from the proceedings of the Establishment Committee dated 7.8.1989 headed by R.D.D.E., Gaya, it would also become clear that it was either the recommendation of the Chief Minister, Secretariat dated 12.5.1989 or the recommendation of the Speaker of Bidhan Sabha which had weighed upon the Committee to take a decision to appoint the petitioner in the Basic school subject to approval of the Director, Secondary Education as would be evident from reading of the proceedings of the Establishment Committee dated 7.8.1989, which reads as follows:--

12. There is nothing on record to show that the Director, Secondary Education had given approval of the aforesaid decision of the R.D.D.E., Gaya dated 7.8.1989 but surprisingly the R.D.D.E., Gaya on his own had issued the appointment letter of the petitioner dated 30th December, 1989 which this Court had to find from his earlier writ application, CWJC No. 11755 of 2001 and the same reads as follows:--

13. As would be apparent, in the initial appointment of the petitioner, the procedure laid down for direct recruitment, namely, publication of the vacancy in the newspaper, his selection through the Selection Committee and the observance of the rules of reservation and roster was never followed and he was straightway appointed as a teacher in Basic School which was/is always governed by Statutory Rules providing the manner of appointment and promotion. At that time, the petitioner was appointed as a teacher in Basic School in 1989, the relevant Rule was Under this 1975 Rules, the Teachers of Basic school have a divisional cadre and Rule 5 clearly lays down that initial appointment on the post of Assistant Teacher shall be made only by way of direct appointment and, to that extent, Rule 5, being relevant, is quoted hereinbelow:--

14. It is also significant to state here that on the date the petitioner got appointed as an Assistant Teacher i.e. on 30.12.1989, there was already a ban

on making direct appointment on the post of Assistant Teacher in the Basic school under the government order No. 1067 dated 17.8.1988 wherein it was clearly mentioned that any appointment on the post of Assistant Teacher in the Basic school could be made by the R.D.D.E. on the basis of publication of panel based on selection made through interview and also after obtaining prior approval of the Director, Primary Education. To that extent, it would be relevant to quote the aforesaid government instruction contained in letter No. 1067 dated 17.8.1988 which, for the sake of clarity and convenience, is quoted herein below:--

15. Thus on a bare reading of Rule 5 of the 1975 Rules read with government letter dated 17.8.1988, it becomes absolutely clear that the initial appointment of the petitioner on the post of Assistant Teacher in the Basic school on the basis of his working as a Peon in a Zila School was out and out an illegal act and such appointment to the petitioner in the teeth of the constitutional provision under Article 14 and 16 of the Constitution of India has to be termed as ab initio void.

16. Such appointment, however, made in the field office by R.D.D.E., Gaya, which was never brought to the notice of the Director, Secondary Education at least in the manner prescribed in the aforesaid departmental instruction dated 17.8.1988, was sought to be legalized by the petitioner himself by earning his next promotion in the intermediate trained pay-scale on 26.6.1992 under the orders of the R.D.D.E. again without following the provision of 1975 Rules laying down the manner of promotion only through the prescribed Committee. This becomes again clear from the letter of promotion dated 26/28.7.1992 which, again for the sake of clarity and convenience, is quoted herein below:--

17. It is really amazing that the petitioner, who was appointed in the matric trained post of teacher in Basic School on 30.12.1989, was promoted on the I.A. Trained post of teacher in the Basic school in a period of less than three years, to be precise within two years and eight months, though the rules of the government have always been consistent that for earning promotion from matric trained teacher to I.A. trained teacher, a minimum period of eight years is required.

18. What is really more astonishing to note to the petitioner is that the petitioner even without completion of a period of seven years of total service on the post of Teacher in Basic school was granted promotion on the post of B.A. trained teacher in the Basic school by order dated 27.4.1996. The contents of this letter dated 27.4.1996 would go to show that someone had added with hand that such promotion of the petitioner in the B.A. trained pay-scale was given on the basis of a decision taken by the Establishment Committee in its meeting held on 15.6.1994 i.e. some two years back before the issuance of the order. The said order of promotion of the petitioner in the B.A. trained pay-school dated 27.4.1996 reads as follows:--

19. Thus, such illegal promotion earned by the petitioner having come to the

knowledge of the successor R.D.D.E., Gaya, a show-cause notice was issued to the petitioner on 24.4.2001 to produce his appointment letter, his educational qualification and his order of promotion so that the legality of the appointment/promotion of the petitioner could be enquired into. The contents of the show-cause notice dated 24.4.2001 reads as follows:--

20. As a matter of fact, when the petitioner had not complied with the aforesaid order of the R.D.D.E., Gaya dated 24.4.2001 and did not produce his appointment letter and other documents directed to be produced by him, his payment of salary had been withheld on 24.4.2001 by the order of the R.D.D.E., Gaya contained in letter No. 637 dated 24.4.2001 whereafter only he had submitted his documents on 3.5.2001 and thus the embargo on the payment of salary was lifted by order dated 22.5.2001. Eventually, the R.D.D.E., Gaya having enquired into the nature of appointment of the petitioner on the basis of his appointment letter as also his order of promotion had passed an order on 2.6.2001 cancelling both the promotion in the I.A. trained pay-scale and B.A. trained pay-scale as also directing for recovery of the excess salary earned by him on account of both the aforesaid promotions. The contents of the order dated 2.6.2001 passed by the R.D.D.E., Gaya cancelling the promotions of the petitioner in the I.A. and B.A. trained pay-scale in the Basic school itself depict the gross illegality which was committed in the promotion of the petitioner which, being relevant, is quoted herein below:--

21. This order dated 2.6.2001 started the litigation when the petitioner on 6.9.2001 had filed his first writ application, CWJC No. 11755 of 2001 in which the prayer of the petitioner had read as follows:--

"1(i) To issue an appropriate writ order of direction commanding the respondents to quash the office order dated 2.6.2001 (Annexure-6) as contained in memo No. 873 whereby and whereunder the I.A. Trained and B.A. Trained Scale of the petitioner has been cancelled and also has been order for recovery of the excess payment within 20 equal installments.

(ii) To issue an appropriate writ order or direction commanding the respondents to allow the petitioner to get the scale of B.A. Trained teacher with all consequential benefits.

(iii) To direct the respondents to pay the salaries of the petitioner period from May to till date."

22. In that writ application, though this Court had passed an interim order on 28.9.2001 staying the operation of the order dated 2.6.2001 but, later on, the R.D.D.E., Gaya had filed his counter affidavit on 21.1.2002 wherein he had sought to justify the impugned order dated 2.6.2001 by taking the following plea:--

"6. That it is relevant to mention here that the order of the then R.D.D.E., Magadh Division, Gaya vide memo No. 873 dated 02.06.2001 is reasoned order

and by that order the promotion of the petitioner to I.A. trained and B.A. trained scale has been withheld and illegal withdrawal from the treasury has to be checked and the memo No. 873 dated 02.06.2001 (Annexure-6 of the writ petition) is a step to correct the earlier order and thus check the illegal withdrawal.

7. That it is relevant to mention that the promotion to petition will be given if his position vis a vis other assistant teachers in the gradation list provides for that,. As per things stand now his position is quiet below in the gradation list. Hence a relief sought is denied.

8. That it is relevant to mention here that the new gradation list itself reveals that the petitioner is quite junior to get I.A. trained and B.A. trained scale. It is relevant to state that gradation list is approved by establishment Committee.

9. That it is relevant to mention here that the promotion given is withheld by a reasoned order and after show cause the petitioner is not at all entitled to get the benefit of higher pay scale according to the gradation list.

10. That it is relevant to mention here that after the completion of the gradation list, a thorough enquiry has been made and all the persons who have got promotion illegally show cause has been issued and departmental proceeding is being initiated.

11. That it is relevant to mention here that any promotion without considering the gradation/seniority list is not in accordance with rule. Hence the promotion thus, petitioner got is illegal and has been withdrawn by the then R.D.D.E. by assigning reasons.

12. That it is relevant to mention here that show cause has been issued vide memo No. 1956 dated 30.12.2002 to Smt. Kamla Sinha regarding her promotion and thus accordingly proper and just action will be taken after getting the explanation from Smt. Kamla Sinha Moreover similar matter of this nature is also being investigated.

13. That it is relevant to mention here that a thorough enquiry is being made a any irregularity found will be dealt according to rule. It is obvious that the petitioner position visa a vis other assistant teacher of Govt. Basic school is quite below in the seniority list. Hence he is not suitable for promotion mere qualification is not considered in promotion rather seniority is also considered."

23. After filing of the said counter affidavit, learned counsel for the petitioner appearing in CWJC No. 11755 of 2001 had taken time to file reply to the counter affidavit as is recorded in the order dated 21.1.2002 but, then, ultimately this writ application was dismissed for default on 12.7.2005 and hence the interim order passed by this Court staying the operation of the interim order dated 28.9.2001 had automatically come to an end.

24. Let it be noted that the petitioner had also filed a restoration application on

17.11.2005 being MJC No. 3047 of 2005 but the same was also dismissed for default by an order dated 7.3.2012.

25. It is equally important to note here that during pendency of CWJC No. 11755 of 2001 and in fact after filing of the counter affidavit by R.D.D.E., Gaya, the petitioner had filed another writ application, CWJC No. 7886 of 2002 wherein he had assailed the gradation list of the teachers of Basic school of Magadh Division dated 11.12.2000 in which his name was placed at serial No. 177. What is very significant to be noted herein is that in the subsequent writ application filed by him on 15.7.2002 during pendency of CWJC No. 11755 of 2001, he had withheld the information about filing of the earlier writ application, inasmuch as, it was stated that the petitioner had not moved this Court in the subject matter of the writ application by conveniently either ignoring or misleading the fact that his seniority in the gradation list of the teacher of Basic school was wholly dependent on the outcome of the impugned order dated 2.6.2001 cancelling the promotion both in the I.A. and B.A. trained pay-scale. This writ application also had remained pending from 15.7.2002 and was ultimately dismissed on 14.7.2010 as having become infructuous on the submission made by the learned counsel for the petitioner in CWJC No. 7886 of 2002 that the grievance of the petitioner in the meantime had been redressed.

26. As noted above, the petitioner was while aware of the fact that his first writ application, CWJC No. 11755 of 2001 had already been dismissed on 12.5.2005 and the restoration application MJC No. 3047 of 2005 was pending on the day, his counsel had sought to withdraw the second writ application, CWJC No. 7886 of 2002 under an order of this Court dated 14.7.2010 but, then, the petitioner seems to be a veteran litigant who again suppressed this fact even while seeking to withdraw his second writ application. Thus, after disposal of the second writ application filed by the petitioner on 14.7.2010, an enquiry was made with regard to nature of appointment of the petitioner on the post of Teacher in the Basic school and the R.D.D.E., Gaya, by his letter dated 4.4.2011, had reported the entire matter to the Director, Primary Education with regard to illegality in the very appointment of the petitioner on the post of Assistant Teacher in Basic school by pointing out that the petitioner was a Peon in Zila School and could never be appointed as a Teacher in Basic school and that too by way of direct appointment even when a specific prior approval of the Director, Primary Education as per the government instruction dated 17.8.1989.

27. As a matter of fact, a show-cause notice was also issued to the petitioner on 4.4.2011 which reads as follows:--

28. The petitioner in his reply dated 15.4.2011 had come out with an explanation that he was actually promoted by way of appointment in Basic school on 30.12.1989 and such promotion was permissible because Zila School and Basic School had a common cadre of Class-4 employees and the petitioner could earn promotion on the post of Teacher from the post of Peon. On such show-cause reply of the petitioner, the R.D.D.E., Gaya had conducted hearing on 10.6.2011

but, the petitioner could not lead satisfactory evidence for justifying his appointment on the post of teacher in Basic school and had sought for time and again on 18.6.2011, when he had appeared before the R.D.D.E., Gaya for hearing, he had again sought adjournment for producing evidence.

29. Having thus taken time before the R.D.D.E., Gaya in the matter of justifying the appointment on the post of teacher in the Basic school, he had in the meantime filed CWJC No. 16967 of 2011 in which again he had suppressed all these facts and had made a simple prayer for his promotion from lower subordinate education service to subordinate education service. Let it be noted that the promotion to a teacher of Basic school whose appointment itself on the post of Teacher in Basic school was under cloud and was subject matter of a show-cause notice before the R.D.D.E., Gaya dated 4.4.2011 was simply not possible but, this Court, in absence of the prior information given by the petitioner, had disposed of the writ application, CWJC No. 16967 of 2011 on the very first day of its hearing on 27.9.2011 by relying on the averments made by the petitioner in the writ application wherein the Director, Primary Education was directed to look into the matter and pass its appropriate order with regard to the claim of promotion of the petitioner.

30. Thus, the reference already made by the R.D.D.E., Gaya vide his letter dated 4.4.2011 as also the direction of this Court in the order dated 27.9.2011 in the third writ application of the petitioner, CWJC No. 16967 of 2011 became a reason for the authorities to look into the matter in detail and that is how by an order dated 15.2.2012, the Director, Primary Education had asked the R.D.D.E., Gaya to complete the enquiry whereafter a fresh show-cause notice was given to the petitioner on 23.2.2012 and the petitioner had filed his show-cause reply on 2.3.2012 and supplementary show-cause reply on 15.3.2012.

31. In order to appreciate the fact that the petitioner was made fully aware of the nature of illegality in his initial appointment, it would be also relevant to reproduce the show-cause notice dated 23.2.2012 issued by the R.D.D.E., Gaya to the petitioner which reads as follows:--

32. It has to be kept in mind that the petitioner in his reply could not produce any evidence that his appointment on the post of Teacher in Basic school was valid and legal, inasmuch as, all that he had said in his reply dated 15.3.2012 was as follows:--

33. One thing, therefore, is very clear that the petitioner was given adequate and full opportunity to explain the things but he could not justify his appointment made on the post of Teacher in a Basic school, inasmuch as, he, being a class-4 employee of the office cadre jumping to the Basic school and, thereafter, walking into the cadre of Assistant Teacher and that too without following the prescribed procedure for appointment of teacher in Basic school, could not have been explained by him either on fact or in law.

34. It is here that now the case of the petitioner has to be examined as per the

averments made in the writ application because now the petitioner wants this Court to believe that there was a policy of the government to promote Peon on the post of Clerk but the petitioner because of his higher qualification was appointed on the post of Teacher. He has also gone to justify such appointment on the basis that since he had completed teachers training course under the order of the competent authority of the State Government by sweeping over his work from Peon to Darban and, therefore, he was promoted to the post of Teacher. To that extent, paragraph Nos. 10 to 15 of the writ application would by itself expose the petitioner to go uncertain extend, which reads as follows:--

"10. That in the year 1996 there was policy of the Govt. to promote the Peon to the post of Clerk if the fulfill the criteria of qualification.

11. That in the light of policy decision of the Govt. the petitioner appear before the Board but did not appointed on the post of Clerk due to higher education.

12. That it is humbly submitted that in the year 1982 the petitioner along with other permitted by Govt. of Bihar for obtaining B.Ed. Certificate from Govt. School on the basis of order dated 9.11.82 the petitioner was sent for B.Ed. training.

13. That due to his study the petitioner has no other option but to request to post him as night Guard so that he may got his qualification.

14. That it is humbly submitted after completion of his education, the Division establishment Committee Consider the petitioner's case and on the basis of his qualification he was promoted to the post of Teacher on 30.12.95.

15. That here is a proper place to mention that the Govt. think it is appointment but is fit is not appointment rather it is a promotion granted on the basis of qualification."

35. As noted above, while the appointment letter of the petitioner dated 30.12.1989 on the post of Assistant Teacher in Basic school talks of his being Peon and being appointed on the post of Assistant Teacher but the petitioner has come out to defend his appointment on the basis of his promotion on the post of teacher. Though according to him, there was only a provision for promotion of Peon to the post of Clerk but the Committee keeping in view of his higher qualification had found him to be promoted on the post of teacher.

36. Thus, it becomes more than clear that not only the petitioner has been taking inconsistent stand and has conveniently forgotten Pairvi and recommendation through Cabinet Minister on 2.7.1987 and Chief Minister's Secretarial and Speaker, Bihar Vidhan Sabha clearly mentioned in his appointment letter dated 30.12.1989.

37. All these aspects in fact have been gone into at great length by the competent authority, namely, R.D.D.E., Gaya in the impugned order dated 7.4.2012 and its relevant portion have also been underlined by this Court to

emphasize the nature of illegal appointment of the petitioner:--

38. It is this order which in fact has also been affirmed by another order dated 6.6.2012 passed by the Director of Education Department again after affording opportunity of hearing to him.

39. It is also very significant to state that pursuant to the aforesaid order passed by this Court in CWJC No. 16967 of 2011, the Director, Primary Education has also passed an order dated 12.2.2013 denying the promotion to the petitioner wherein it was recorded as follows:--

40. It is equally important to note that when the petitioner on receipt of the aforesaid order had made a grievance in his pending contempt application with regard to the similarly situated persons being retained on the post of Basic teacher, the services Smt. Kamla Sinha, Abhay Kumar, Smt. Bindu Kumari, Manoj Kumar and Raj Manohar Prasad were terminated under the order of the Principal Secretary dated 19.11.2013 which, for the sake of clarity and convenience is quoted hereinbelow:--

41. In view of the above, the ground of the petitioner of termination or retaining someone illegally appointed like him has also disappeared the dispute though the petitioner had not raised this issue in the present writ application but as the subsequent event had taken place during pendency of the writ application, it has also been taken note of to brush aside any possible challenge of the petitioner in future on the ground of discrimination.

42. In addition to this, this Court from the records of contempt petition, MJC No. 280 of 2012 would find that the Principal Secretary of the Education Department himself in compliance of the order of this Court passed in the contempt application filed by the petitioner has submitted that a well considered report dated 2.12.2013 with regard to the petitioner and justifying the stand of the officials of the department with regard to cancellation of the appointment of the petitioner on the post of teacher in the Basic school. This report dated 2.12.2013, being an eye opener, is also reproduced in verbatim which reads as follows:--

43. As a matter of fact, when certain more issues were raised on behalf of the petitioner in his contempt petition, MJC No. 280 of 2012 and an order was passed by this Court on 11.12.2013 directing the Principal Secretary of the Education Department to once again examine the case of the petitioner at length in the context of the issues raised by him, the Principal Secretary had again gone into the issue with all care and caution, keeping in view the observation made by this Court in the pending contempt application and had recorded in the report dated 18.01.2014, which reads as follows:--

44. The petitioner on receipt of the aforesaid report in fact has filed an affidavit in MJC No. 280 of 2012 wherein having received the report of the Principal Secretary dated 22.1.2014, quoted above, has also filed a detailed affidavit

highlighting the infirmity of the enquiry report by way of seeking relief of reinstatement of the petitioner in service on the post of teacher. To that extent, it would be relevant to quote paragraph No. 1 and 2 of the affidavit filed by him in MJC No. 280 of 2012 which reads as follows:--

"1. That I am Petitioner in this case and as such I am well acquainted with the facts and circumstances of the case. I have read the enquiry report submitted by the Principal Secretary, Education Department, Govt. of Bihar, Patna on 22.01.2014 in the Hon"ble Court.

2. That this affidavit is being filed to highlight the infirmity in the enquiry report with a prayer that the facts stated in the enquiry report is in consonance with the facts stated by the petitioner and even though state authorities cannot review its own order but the Hon"ble Court even in contempt jurisdiction can pass an order for the reinstatement of the petitioner in the light of the findings of the enquiry report as even as per the enquiry report the petitioner's continuance in the service was not under forged appointment or absolutely illegal appointment. Even the illegality pointed out by the department was in the knowledge of the state authority and they condoned it by not acting at the relevant time."

45. It thus becomes clear that even after the petitioner was aware that his writ application has already been dismissed on 21.1.2014, he had gone to make a prayer for his reinstatement in service before the Court hearing his contempt application, MJC No. 280 of 2012, which of-course has not been allowed till date.

46. Thus, this Court on perusal of the impugned orders and the other materials as discussed above would find no errors in them. The issue relating to promotion of the petitioner from the post of Peon to the post of Assistant Teacher has been decided by the authority strictly in accordance with law keeping in view the requirement of the statutory rule wherein only the direct appointment can only be made on the post of Assistant Teacher in Basic school after publication of the advertisement in the newspaper followed by preparation of panel and its approval by the competent authority. This Court will therefore have no difficulty in coming to a conclusion that the appointment of the petitioner allegedly by way of promotion from the post of Peon to the post of Assistant Teacher in a Basic school was absolutely in teeth of the statutory rules governing the appointment of Teachers in Basic schools.

47. The submissions that simply because the petitioner was allowed to continue in the school as a Teacher from 1989 to the date of the impugned order i.e. 7.4.2012 should weigh upon this Court in allowing the petitioner to continue on the post of Teacher even if his appointment was illegal only because of long continuation in service has been also answered both by this Court and the Apex Court time without number. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of State of Bihar Vs. Upendra Narayan Singh and Others, relevant portion whereof reads as follows:--

"59. At the hearing of this appeal, we asked the learned senior counsel appearing

for the respondents to show that before appointing his clients on ad hoc basis, the then Regional Director, Gaya had issued an advertisement and/or sent requisition to the employment exchange and made selection after considering competing claims of the eligible candidates but he could not draw our attention to any document from which it could be inferred that the respondents were appointed after advertising the posts or by adopting some other method which could enable other eligible persons to at least apply for being considered for appointment. He, however, submitted that issue relating to legality of the initial appointments of the respondents has become purely academic and this Court need not go into the same because their services had been regularised by the competent authority in 1992.

60. In our opinion, there is no merit in the submission of the learned senior counsel. If the initial appointments of the respondents are found to be illegal per se, the direction given by the High Court for their reinstatement with consequential benefits cannot be approved by relying upon the so-called regularization of their services. Had the respondents been appointed by the competent authority after issuing an advertisement or sending requisition to the employment exchange so as to enable the latter to sponsor the names of eligible persons then they would have certainly produced the relevant documents before the High Court or at least before this Court. However, the fact of the matter is that none of the documents which could give a semblance of legitimacy to the appointments of the respondents was produced before the High Court and none has been produced before this Court.

63. The so-called regularization of the services of the respondents on which heavy reliance was placed by the learned senior counsel appearing on their behalf in the context of averments contained in paragraph 4 of the counter affidavit filed before this Court by Shri Prasannjeet Kumar Singh (respondent No. 3 herein) is a proof of nepotism practiced by the officer and deserves to be ignored. For the reasons best known to them, the respondents have not produced copy of the order by which their services were regularised. Perhaps none exists.

64. The statement furnished by counsel for the appellant, which is accompanied by documents marked "A" and "B", shows that in less than 7 months of the respondents appointment (except respondent No. 1 who is said to have been appointed with effect from 9.10.1991), Dr. Darogi Razak is said to have written confidential memorandum bearing No. 20 dated 11.5.1992 (Annexure "A") to District Animal Husbandry Officer, Aurangabad, Gaya that ad hoc appointments made vide Memorandum No. 1467 dated 9.10.1991 are being regularized temporarily by the local appointments committee constituted on 11.5.1992. What is most amazing to notice is that the local appointments committee was constituted on 11.5.1992, the committee met on the same day and regularised the ad hoc appointments and on that very day the Regional Director sent confidential letter to his subordinate, i.e., the District Animal Husbandry Officer

informing him about the regularization of ad hoc appointments. No rule or policy has been brought to our notice which empowers the appointing authority to regularize ad hoc appointments within a period of less than 7 months. Therefore, we have no hesitation to hold that the exercise undertaken by Dr. Darogi Razak for showing that appointments of the respondents were regularized by the local appointments committee on 11.5.1992 was a farce.

65. In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits.

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another Vs. Jagjit Singh and another, , Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , Union of India (Railway Board) and others Vs. J.V. Subhaiah and others etc. etc., , Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, , Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, , M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another, and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , Union of India (UOI) and Another Vs. International Trading Co. and Another, and Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, ."

(Underlining for emphasis)

48. The aforesaid view of the Apex Court in fact only supports the earlier Full Bench decision of this Court in the case of Rita Mishra v. State of Bihar and Ors. reported in 1987 BBCJ 701. which was affirmed in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, wherein it was held as follows:--

"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."

49. The plea of the impugned order being retaliation for denying him benefit of promotion in view of the order of this Court dated 27.9.2011 in CWJC No. 16967 of 2011 and the pending contempt application, MJC No. 280 of 2012 is to be also noted for its being rejected, inasmuch as, it has already been explained in paragraph No. 27 that a show-cause notice dated 4.4.2011 had already been issued to the petitioner by R.D.D.E., Gaya.

50. In the present case, the petitioner could actually continue in service only by litigating the issue before this Court at least from the year 2001 to 2011 as has been discussed at length earlier. The respondents in fact having been subjected to both repeated writ application and contempt petition being filed by the petitioner were not in a position to take any decision till disposal of the last writ application and, therefore, keeping in view that the promotion of the petitioner in I.A. and B.A. Scale was already cancelled in the year 2001 and thereafter his appointment also has been cancelled by the impugned order, the plea of long

continuation of the petitioner on the post of Teacher will have no meaning. As a matter of fact, the petitioner on the strength of the interim order wanted to fool the authorities because whatever order was passed in compliance of the stay order of this Court in the first writ application either by way of restoring him the benefit of I.A. and B.A. Trained Pay-Scale was a conditional order dependent on the final outcome of the writ application and, as has been found above, the aforesaid writ application was ultimately dismissed and, therefore, the respondents cannot be faulted either on fact or in law in taking a decision against the petitioner specially when he himself had claimed his promotion in subordinate education service least realizing that he was not even eligible to be the member of cadre of teacher of Basic school and his promotion in I.A. and B.A. trained pay-scale was already cancelled.

51. That being so, this Court does not find any error in the impugned orders passed by the Regional Deputy Director of Education, Magadh Division, Gaya and the Director of Education Department who have only held the obvious that the appointment of the petitioner on the post of Assistant Teacher was vitiated both on fact and in law.

52. This writ application is, accordingly, dismissed and, as a result, the petitioner now shall stand reverted back to the post of his Peon.