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**(2023) 04 JH CK 0041**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 376 Of 2013**

Upendra Nath Verma

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

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**Date of Decision : 24-04-2023**

**Acts Referred:**

Constitution Of India, 1950 — Article 311

**Citation : (2023) 04 JH CK 0041**

**Hon'ble Judges : Anubha Rawat Choudhary, J**

**Bench : Single Bench**

**Advocate : Abhay Kumar Mishra, Krishna Prajapati, Ranjan Kumar, Rakesh Kumar Roy, Binit Chandra**

**Final Decision : Dismissed**

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## **Judgement**

Anubha Rawat Choudhary, J

1. Heard the learned counsel for the parties.

2. This writ petition has been filed for the following reliefs:

"(a) For the issuance of an appropriate writ/writs, order/orders, direction/directions for quashing of the letter as contained in Memo No. 927 dated 01.11.2012 issued under the seal and signature of District Education Officer, Garhwa whereby and whereunder the services of the petitioner has been terminated on the ground that the initial appointment itself was found forged thereby he was relieved with immediate effect as the aforesaid order of termination has been passed without regular departmental proceeding that too without providing any opportunity of filing and also without supply of the relevant document to the petitioner and without any regular appointment or without providing any document his initial appointment was held illegal after passing of more than 24 years as the petitioner was appointed vide appointment letter dated 10th April, 1988 thus the order of termination is illegal and arbitrary.

And/Or

(b) For issuance of an appropriate writ/writs, order/orders, direction/direction to the respondents that the petitioner be restored to its original post and appropriate order be passed as the order of termination has been passed without regular departmental enquiry and without hearing the petitioner and only show cause notice has been issued and no document whatsoever has ever been supplied by the respondents thus the order of termination is grossly illegal and arbitrary therefore the petitioner be restored to its original post with all consequential benefits.

And/Or

(c) Petitioner further prays for issuance of an appropriate writ, order or direction in the nature of certiorari for quashing the order contained in letter no. 2905 dated 29.10.2012 (Annexure-15) and also for quashing the letter contained in memo no. 2108 dated 22.8.2013 (Annexure-16) both issued under the seal and signature of the Director, Secondary Education, Jharkhand, Ranchi as the aforesaid orders are absolutely illegal, arbitrary and unsustainable in the eye of law as firstly by the letter dated 29.10.2012 direction has been issued to initiate criminal as well as civil proceeding against the petitioner and thereafter a second show cause notice has been issued and after issuance of the second show cause notice, appointment of the petitioner has been cancelled."

#### Factual Matrix

3. It is the case of the petitioner that the petitioner had applied for the post of teacher pursuant to an advertisement and vide letter dated 15.07.1987 (annexure-1) issued by Vidyalaya Seva Board, Patna, the petitioner was directed to appear before the interview Board on 03.08.1987.

4. It is further case of the petitioner that he was selected and appointed as Assistant Teacher vide memo no. 1260-1298 dated 10.04.1988 whereby his place of posting was shown as General High School, Rosma, Purnea. The name of the petitioner was at serial no. 3 for the district of Purnea.

5. It is his further case that due to some personal reasons, the petitioner did not join the school at Purnea and made a request for his transfer. Consequently, memo no. 511-5 dated 16.08.1989 was issued and he was to be adjusted at Rama Sahu Arya Vaidya Uccha Vidyalaya, Garhwa, Palamau. He joined the school at Garhwa on 01.09.1989 which was informed to the District Education Officer vide letter dated 05.09.1989 and the petitioner continued his service. His service book was also prepared and he was paid salary from time to time.

6. In the year 2003, the petitioner was asked to submit his entire documents to the principal of the school at Garhwa. In compliance thereto, the petitioner handed over the documents to the District Education Officer, Garhwa on 13.06.2003 which is apparent from the endorsement dated 13.06.2003 on the letter of the principal dated 12.06.2003 (Annexure- 5). The petitioner has heavily

relied upon endorsement dated 13.06.2003 on Annexure- 5 dated 12.06.2003 to submit that the letter of appointment dated 10.04.1988 (annexure- 2) as well as letter of transfer dated 16.08.1989 (Annexure- 3) and the entire service book in original was handed over to the District Education Officer, Garhwa.

7. The petitioner was issued letter no. 353 dated 21.06.2003 (Annexure-6) to explain the entire gamut of affairs regarding his appointment. The petitioner responded vide letter dated 28.06.2003 (Annexure-7) but did not receive any further communication.

8. Thereafter, the District Educational Officer, Garhwa asked the principal of the school at Garhwa, vide letter dated 08.09.2010, to submit all the original documents of the petitioner i.e. appointment letter, transfer letter and all the testimonials of the petitioner for verification. Another letter dated 07.09.2010 was issued to the petitioner wherein it was informed that certain complaint was received and therefore, the petitioner was asked to appear in person on 10.09.2010. A letter dated 26.11.2010 was issued directing the petitioner to remain present on 08.12.2010 in order to gather up-to-date information from the petitioner. A letter dated 10.12.2010 was issued by the principal of the school forwarding the service book of the petitioner and the show cause issued earlier to the petitioner by the respondent authority.

9. The petitioner was issued a show cause vide letter no. 710 dated 17.08.2012 mentioning that the letter of appointment of the petitioner and also the letter of adjustment of the petitioner were never issued by the authority at Patna and he was asked to immediately give his explanation within 3 days.

10. The petitioner responded vide letter dated 21.08.2012 and stated that in response to letter dated 08.09.2010, the original letter of appointment, transfer letter and other original documents including those relating to his educational qualifications were handed over vide letter no. 65 dated 14.09.2010 issued by the school.

11. Another letter dated 29.10.2012 was issued with a direction to lodge First Information Report against the petitioner and to initiate recovery of the entire amount paid to the petitioner through the certificate proceedings. It was also directed that action be taken in accordance with law against the principal of the school and also the concerned officer who had ordered for payment of salary to the petitioner. Vide impugned order dated 01.11.2012, the salary of the petitioner was stopped.

12. Ultimately, a letter dated 22.08.2013 (Annexure- 16) was issued holding that the explanation furnished by the petitioner was not satisfactory and that the petitioner was appointed as math's teacher at Garhwa on the basis of forged documents which were never issued by the department and consequently, the services of the petitioner was terminated.

Arguments of the petitioner.

13. The specific case of the petitioner is: -

a. the petitioner has been terminated from the services of a school teacher (mathematics) without conducting any departmental proceedings and therefore the order of termination is fit to be set-aside having been passed in gross violation of the principles of natural justice and fair play.

b. The petitioner having attained the age of superannuation, no departmental proceedings can be initiated after his retirement and therefore the petitioner is entitled to all retiral benefits having put in 24 years of service.

c. If the letter of appointment of the petitioner and the letter of adjustment were forged, then all the persons mentioned in those letters should have been terminated which has not been done.

d. The entire allegation against the petitioner was based on complaint made by one Chandeshwar Prasad Singh whose service was also terminated on similar grounds in spite of the fact that his name was appearing in the panel of final select list placed on record by the respondent State of Bihar. On this basis, it has been alleged that the State of Bihar has not disclosed full facts before this Court.

Arguments of the Respondent State of Bihar

14. Case of the Respondent State of Bihar is:-

a. that the appointment letter bearing no. 1260 dated 10.04.1988 and the adjustment letter bearing memo no. 511-5 dated 16.08.1989 were not issued from the office of Director, Secondary Education, Bihar, Patna and therefore the said two letters are forged and fabricated.

b. The panel of the candidates containing the select list of maths teachers arising out of the selection process conducted by Vidyalaya Seva Board, Patna which was forwarded to the respondents does not include the name of the petitioner and therefore, the question of issuance of appointment letter to the petitioner and subsequent letter of adjustment, did not arise.

Arguments of the Respondent State of Jharkhand.

15. On the other hand, the case of the respondent State of Jharkhand is that the appointment of the petitioner being based on forged and fabricated documents, which were never issued by the concerned authorities, is void ab-initio and in such circumstances no regular departmental proceedings was required to be held and the petitioner is not entitled to protection under Article 311 of the Constitution of India. The required enquiry and natural justice were done. The petitioner was given opportunity to explain the circumstances against him vide letter dated 21.06.2003 and when his explanation was not found satisfactory, a show cause was also issued to which the petitioner replied and the reply being not satisfactory, the petitioner was terminated holding that his appointment was based on forged and fabricated documents.

Findings of this Court.

16. From the perusal of the impugned order dated 22.08.2013 (Annexure- 16), it is apparent that the enquiry was made from the office of Director, Secondary Education, Bihar, Patna who, vide memo no. 1785 dated 23.07.2012 informed that the memo no. 1260 dated 10.04.1988 in connection with the appointment of the petitioner and memo no. 511-5 dated 16.08.1989 in connection with the adjustment of the petitioner in another school, were never issued from their office. The petitioner was granted due opportunity to explain his position to justify his appointment and was also issued show cause to which he replied, but his response was not satisfactory and consequently, he was terminated by holding that his appointment and posting were based on documents which were never issued by the authority and therefore, the appointment itself was based on forged and fabricated document.

17. This Court also finds that the order of termination dated 22.08.2013 was issued after granting repeated opportunities to the petitioner to satisfy the authority with regard to genuineness of his letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989, but the authorities found that those documents were never issued and ultimately terminated the petitioner with a direction for recovery. This court also finds that necessary enquiries were also conducted from the authority who was said to have issued the letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989 and it was found that letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989 were never issued by their office.

18. From the records of this case, it is not in dispute that the interview was conducted by Vidyalaya Seva Board, Patna. Therefore, if the petitioner was one amongst the selected candidates, his name ought to have figured in the list of finally selected candidates forwarded by Vidyalaya Seva Board, Patna.

19. In the present case, the counter-affidavit of the Director of Secondary Education, Government of Bihar, Patna dated 16.12.2020 reveals that vide letter no. 1581 dated 07.06.2011, the Director of Secondary Education, Jharkhand, Ranchi had requested the Director of Secondary Education, Patna, for verification of the aforesaid letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989 which were the basis of joining of the petitioner in government service as Assistant Teacher at Garhwa, Jharkhand. Pursuant thereto, the matter was cross checked from the panel of successful candidates prepared by Vidyalaya Seva Board, Patna vide letter no. 285 dated 09.09.1986 in connection with appointment of successful teachers in Maths in which the name of the petitioner did not figure and it was also found that the appointment letter was never issued to the petitioner from the office of Secondary Education Department, Bihar, Patna. Consequently, the Director, Secondary Education, Bihar, Patna, issued memo no. 1785 dated 23.07.2012 to the District Education Officer, Garhwa, stating that the appointment letter bearing no. 1260 dated 10.04.1988 and the adjustment letter bearing memo no. 511-5 dated 16.08.1989 were not issued by

the Secondary Education, Education Department, Patna.

20. The letter no. 285 dated 09.09.1986 issued by Vidyalaya Seva Board sending the panel of successful candidates against the advertisement no. 01 of 1984 has been brought on record. The total list of 417 candidates is in 30 pages, out of which recommendation has been made for 280 candidates. The name of the petitioner does not figure in the entire list, much less amongst the selected candidates. The letter no. 285 dated 09.09.1986 along with the panel of Maths subject has been annexed along with the said affidavit dated 16.12.2020.

21. A response to the said affidavit has also been filed by the petitioner by way of rejoinder dated 26.02.2021 reiterating the factual aspects and stating that the entire enquiry against the petitioner was based on complaint made by one Chandeshwar Prasad Singh whose service was also terminated on similar grounds. The name of Chandeshwar Prasad Singh appears in the panel at Sl. No.210 and name of Chandeshwar Prasad Singh also appears in the letter of adjustment dated 10.04.1988 (Annexure-2) but still the services of Chandeshwar Prasad Singh were terminated. It was alleged that the State of Bihar has not disclosed full facts before this Court. The complaint made by Chandeshwar Prasad Singh has been annexed along with the affidavit dated 26.02.2021 wherein he made allegation that the appointment letter of the petitioner as well as his adjustment letters were forged and fabricated.

22. It is important to note that the petitioner, in his writ petition, has claimed that he had participated in the selection process pursuant to the advertisement dated 27.11.1987 but the interview letter was memo no. 2645 dated 15.07.1987 and he appeared in the interview on 03.08.1987. These dates cannot be reconciled as under any circumstances, the interview cannot be prior to advertisement. The respondents in their counter affidavit have disputed the publication of advertisement on 27.11.1987 and have also disputed the factum of interview on 03.08.1987. Rather the specific case of the respondents in the counter affidavit is that the advertisement number was 1 of 84 and the panel of successful candidates was contained in letter no. 285 dated 09.09.1986 sent by Vidyalaya Seva Board. In the rejoinder to the counter affidavit, the petitioner has made a specific statement in para 11 that the petitioner was appointed as per advertisement no. 1 of 1984 and in para 9 he has stated that the name of the complainant, Chandeshwar Prasad Singh, appears in the list of selected candidates at serial no. 210 but Chandeshwar Prasad Singh was also illegally terminated on the similar ground as that of the petitioner. It is important to note that the petitioner has claimed advertisement, interview letter, interview etc. in the year 1987 but the list of successful candidates is dated 09.09.1986 in which the name of the complainant Chandeshwar Prasad Singh appears who according to the petitioner also had participated in the same selection process.

Amongst all the aforesaid dates, the fact that the selection had taken place pursuant to advertisement number 1 of 84 is not in dispute and the respondents have brought on record the select list of advertisement no.1 of 1984 which was

forwarded vide letter dated 09.09.1986 which is on record which gives the list of candidates for the subject 'maths'.

23. It is not in dispute that the entire selection process was conducted by Vidyalaya Seva Board, Patna. Once the document issued by Vidyalaya Seva Board, Patna containing the select list /panel has been brought on record in which the name of the petitioner does not appear, the contention of the petitioner that he was finally selected, has no basis at all. Once the petitioner was not selected, there was no question of issuance of any letter of appointment or letter of adjustment in connection with the petitioner.

24. In view of the aforesaid facts and circumstances, this court finds that the respondents had given enough opportunity to the petitioner to satisfy the authority with regard to the genuineness of his selection and the genuineness of the letter of appointment as well as the letter of adjustment and upon receiving reply from the petitioner, the respondents had also done the necessary verification from the concerned authority at Patna and ultimately found that the documents of appointment and adjustment were never issued and accordingly were forged and fabricated and consequently, terminated the services of the petitioner which does not call for any interference.

25. This court finds that once the entire panel which was forwarded by Vidyalaya Seva Board has been filed and in the said panel the name of the petitioner does not figure at all, there is no question of any follow up letters being issued for appointment of the petitioner or adjustment of the petitioner to another place. Thus, the allegation made by the respondents that the appointment of the petitioner was not based on documents filed by the petitioner and the allegation that the appointment was based on forged and fabricated document, has been duly established by the respondents. This court also finds that the salary of the petitioner was stopped, recovery was directed and his service was terminated after the necessary enquiries.

26. In the judgement reported in (2019) 13 SCC 250 (The State of Bihar and Others Vs. Devendra Sharma), the controversy was as to whether the writ petitioners were legally and validly appointed. The Hon'ble Supreme Court recorded that they were given notice to establish the genuineness of their appointment and to show-cause but they could not establish the genuineness or legality of their appointment before the State Committee and it was opined by the committee that their appointment was illegal and void ab initio. It has been held that since the appointment of the said writ petitioners was ab initio void, they could not be said to be the civil servants of the State and therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules, did not arise.

27. In the present case also, the petitioner was granted opportunity to establish the genuineness of his letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989, but he failed to establish their genuineness. Upon

verification it was found that these letters were never issued by the concerned office; the authority who had conducted the selection process pursuant to the advertisement had forwarded a panel of candidates and mentioned the list of selected candidates in which the name of the petitioner does not figure. Once the name of the petitioner does not figure in the select list, there can be no question of issuance of follow up letter of appointment dated 10.04.1988 and further issuance of letter of adjustment dated 16.08.1989. Thus, there can be no doubt that the petitioner was never selected and that letter of appointment dated 10.04.1988 and letter of adjustment dated 16.08.1989 are not genuine.

28. This Court finds that as per the so-called letter of appointment dated 10.04.1988, the petitioner was appointed as probationer for a period of 2 years. The petitioner was to submit his original certificates of educational qualification and other eligibility criteria, a medical fitness certificate of civil surgeon and also a declaration as to whether he was employed somewhere else and that he has been duly relieved from such employment.

29. The records of this case also reveal that the various documents/qualifications of the petitioner were never verified and his appointment was never confirmed by any competent authority. Moreover, the so-called letter of appointment dated 10.04.1988 appointing the petitioner to a school at Purnea stipulated that the petitioner was to join the school within 21 days of his appointment failing which his appointment would be cancelled. Admittedly the petitioner did not join the school at Purnea and joined the school at Garhwa on the strength of so called letter of transfer /adjustment dated 16.08.1989. Firstly the petitioner could not give satisfactory explanation as to what he was doing during the period from 10.04.1988 to 16.08.1989 in spite of there being a strict timeline for joining and secondly, when the petitioner never joined at his initial place of posting at Purnea , how could he be transferred or adjusted for posting at Garhwa vide letter dated 16.08.1989.

30. This Court finds that at the stage of considering the genuineness of the appointment of the petitioner, specific queries were made vide letter dated 21.06.2003 (Annexure- 6) that whether the petitioner had joined at his initial place of posting at Purnea and as per the alleged letter dated 10.04.1988 the petitioner was given only 21 days' time to join at Purnea then what was the petitioner doing in the intervening period till his joining at Garhwa on 01.09.1989. It was also asked as to whether the appointment of the petitioner was confirmed or not and whether his credentials were ever verified or not.

31. The petitioner responded vide letter dated 28.06.2003 (Annexure – 7) and admitted that he never joined at Purnea and made a request for transfer to Garhwa, but nothing was mentioned about the date on which he made a request for his transfer much less as to whether such request was made within 21 days from the letter of appointment dated 10.04.1988. The letter of such request for adjustment/transfer was neither filed before the respondent authority nor filed before this Court nor the date of request for transfer has been mentioned. The

authorities found the explanation furnished by the petitioner as unsatisfactory and upon verification found that the documents filed by the petitioner were never issued and the name of the petitioner never appeared in the panel. The petitioner was directed to show cause vide letter no 710 dated 17.08.2012 (annexure-12) to which he replied vide letter dated 21.08.2012 and then impugned order dated 01.11.2012 (annexure-14) stopping his salary ; impugned order dated 29.10.2012 ( annexure-15) directing recovery and impugned order dated 22.08.2013 (annexure-16) terminating the services of the petitioner, were passed.

32. So far as the judgement relied upon by the petitioner reported in (2021) SCC OnLine Jhar 178 (Paritosh Kumar Rai Vs. Union of India) is concerned, the same does not apply to the facts and circumstances of this case. In the said case the departmental proceeding was initiated by issuing a charge-sheet and without taking it to a logical end the order of termination was passed only on the basis of Vigilance enquiry. Under the facts of the said case, this Court was of the view that the allegation of fraud which was disputed by the petitioner right from beginning was required to be proved in course of departmental proceedings which was already initiated. Consequently, the order of termination was set-aside and the petitioner of the said case was reinstated only for the purposes of conducting the departmental proceedings and the management was given the liberty to proceed with the disciplinary enquiry by placing the petitioner under suspension in terms of the judgement passed by the Hon'ble Supreme Court, in the judgement reported in (1993) 4 SCC 727 and also (2004) 2 SCC 105 with an observation that that the consequential relief will depend upon the outcome of the disciplinary enquiry. In the present case, no departmental proceedings have been instituted and the petitioner has been terminated after following the principles of natural justice by holding that his appointment was void ab initio. This court is of the considered view that once the appointment has been found to be void ab initio, Article 311 of the Constitution of India will have no application and no regular departmental proceedings were required to terminate the petitioner. Admittedly, no departmental proceedings can be initiated now as the petitioner has already attained the age of superannuation.

33. So far as the other judgment passed in LPA No. 365 of 2019 is concerned, the same is clearly distinguishable on facts. In the said case, the original records were not available in the concerned office of Sub-Divisional Education Officer, Deoghar -cum-Madhupur by which the candidates of the alleged panel were appointed. In the present case, the panel of the recommended/selected candidates has been brought on record which, in turn, has been issued by the Vidyalaya Seva Board, Patna who had conducted the entire process of selection where the name of the petitioner does not figure. This case is not the case of non-availability of the panel to verify as to whether the petitioner was ultimately selected or not, rather in the present case the panel clearly demonstrates that the name of the petitioner did not figure in the list of selected candidates and under such circumstances, there is no doubt that the petitioner was not selected.

It also important to note that the matter arising out of LPA No. 365 of 2019 is also pending consideration before the Hon'ble Supreme court in Civil Diary no. 40059 of 2022 in which notice has been issued and the order of remand has been stayed.

34. There is no doubt that regular disciplinary proceedings cannot be initiated against the petitioner at this stage as he has attained the age of superannuation, but the same does not entitle the petitioner to automatically get post-retirement benefits. This Court finds that once the finding of the respondent authority that the appointment of the petitioner was itself based on forged documents is upheld, the appointment of the petitioner is void ab-initio. Applying the ratio of the aforesaid judgement reported in (2019) 13 SCC 250, in the case of the petitioner, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules, did not arise. The petitioner was granted sufficient opportunity by the respondents to prove that his appointment was genuine but he failed to do so. Even before this court, the panel of candidates including panel of selected candidates sent by Vidyalaya Seva Board, Patna admittedly does not contain the name of the petitioner. The required principles of natural justice have been followed. The criminal case filed against the petitioner arising out of the same allegation is still pending. In such circumstances, the argument of the petitioner that the petitioner could not be terminated without holding regular departmental proceedings is devoid of any merits and hence, it is rejected.

35. As a cumulative effect of the aforesaid findings, the impugned order or action of the respondents do not call for any interference. Accordingly, this writ petition is dismissed.

36. Pending interlocutory application, if any, is closed.

37. Interim order, if any, stands vacated.