

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9522 of 2016

Jiwachh Yadav Son of Late Ramdeo Yadav resident of village - Saharsa,
Police Station Kameshwar Nagar Ashok Paper Mill, District - Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Secondary Education, Education Department, Bihar, Patna
3. The Regional Deputy Director of Education, Darbhanga Division,
Darbhanga
4. The District Education officer, Darbhanga
5. The Incharge Headmistress, Project Girls High School Anandpur, Police
Station Kameshwar Nagar Ashok
6. Laldei Devi Wife of Arjun Jha resident of village - Sahara, Police Station
Kameshwar Nagar Ashok Paper Mill, District - Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Sagar Singh
For the State : Dr. Rakesh Prabhat, AC to SC 21
For respondent no. 6 : Mr. Amarendra Narayan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 18-10-2024

The present writ application has been filed for quashing the order, as contained in Memo No. 20P, dated 12.01.2015, passed by the Director, Secondary Education, Government of Bihar, by which the Director has recalled his earlier order, dated 17.01.2011, whereby the recognition of service of respondent no. 6 was cancelled. The petitioner has also prayed for quashing of the order, as contained in Memo No. 9 (P), dated 27.01.2017, passed by the Director, by which the recognition of service of the



petitioner's father as a Peon has been rejected. The petitioner has also prayed for a direction to the respondent authorities to recognize the service of the petitioner's father as Peon in the Project Girls High School, Anandpur, Darbhanga, and to pay arrears of salary as well as retiral -cum- death benefit.

2. The brief facts, giving rise to the present writ application, is that the Managing Committee of the Project School resolved to appoint the petitioner's father as Peon in the Project Girls High School, Anandpur, on the second post of Peon. The Secretary of the Managing Committee issued appointment letter, dated 06.07.1982 and since then, the petitioner's father has been working in the said school till his death on 07.12.2012.

3. The school, in question, was selected under the project scheme, vide letter no. 108, dated 12.02.1985 and since then, the school has been running as Project School, controlled by the State Government. Vide Government letter no. 142, dated 04.02.1989, a guideline was issued for recognition of service and payment of salary of teaching and non-teaching employees working in the Project Schools in the second phase (1984-85). In terms of the aforesaid letter, a project report of the school was sent to the respondent no. 2, the Director, Secondary Education, Education Department, Bihar, Patna, through proper channel, in



which the name of the petitioner's father was included at serial no. 2 as Peon.

4. On 20.04.1993, the services of one teacher and one clerk was recognized. The Supreme Court passed order, dated 03.01.2006, in a batch of civil appeals relating to project schools, in the case of **State of Bihar and Others v. Project Uchcha Vidya, Sikshak and Others**, reported in **(2006) 2 SCC 545**, directing the State Government to constitute a committee to consider the claim of approval of services of teaching and non-teaching employees of the second phase project schools and accordingly, a three-men committee was constituted. In terms of the decision of the Supreme Court, the respondent no. 5 (the Incharge Headmistress of the School) submitted her report before the three-men committee on 10.05.2006, in which the name of the petitioner's father is mentioned, working as Peon.

5. It is an admitted position that two posts of Class-IV employees were sanctioned in the said Project School. On the first sanctioned post, one Arjun Jha, husband of the respondent no. 6, was appointed and the petitioner's father, namely, Late Ramdeo Yadav) was appointed against the second sanctioned post of Class-IV employee. The respondent no. 6 was the fourth person and was appointed on the fourth post by the Managing Committee. The



three-men committee, vide Office Order, dated 24.06.2008, recognized the service of the respondent no. 6 and by Office Order, dated 22.07.2008, the claim of the petitioner's father was rejected, assigning reason of non-availability of the post because the post was filled up by way of recognition of service of respondent no. 6.

6. The petitioner's father filed a representation before the respondent no. 2, the Director, Secondary Education, Education Department, Bihar, Patna, being aggrieved by the order, dated 22.07.2008, upon which the order, dated 20.04.2010 was passed by the respondent no. 2, rejecting the representation of the petitioner's father, assigning the same reason of non-availability of post.

7. In the circumstances, the petitioner's father filed a writ application, bearing CWJC No. 19321 of 2010, for quashing the orders, dated 20.04.2010, 22.07.2008 and 24.06.2008, whereby the claim of the petitioner's father was rejected and the services of respondent no. 6 was recognized as Peon. The respondent no. 6 also filed a writ application, bearing CWJC No. 12420 of 2009, for payment of salary in terms of the recognition of her service, dated 24.06.2008. Both the writ applications, filed by the petitioner's father and the respondent no. 6, were heard together in a batch of



writ applications. However, the writ application of respondent no. 6 was dismissed and the writ application of the petitioner's father was disposed on 22.05.2015, with a direction to the respondents to consider the claim of the petitioner's father afresh for grant of approval of his service and to consider payment of arrears of salary to the family of the deceased, Ramdeo Yadav. It is pertinent to mention here that during the pendency of CWJC No. 19321 of 2010, the petitioner's father, Ramdeo Yadav, died and the name of the petitioner was substituted as his legal heir in the said writ application.

8. During the pendency of the writ application filed by the petitioner's father, the Director, Secondary Education, issued Memo No. 18P, dated 17.01.2011, whereby the approval granted earlier in favour of respondent no. 6 was cancelled/recalled on the basis of not fulfilling the mandatory condition of regular attendance.

9. Subsequently, the respondent no. 6 filed a review application, bearing Civil Review No. 176 of 2015, for review/modification of the order, dated 22.05.2015, passed in CWJC No. 12420 of 2009 and analogous cases on the ground that vide Office Order, dated 12.01.2015, passed by the Director, Secondary Education, the Office Order, dated 17.01.2011,



cancelling the recognition of the service of respondent no. 6 has been withdrawn. The review application was disposed vide order, dated 20.04.2016. In the review application, the order of this Court, dated 22.05.2015, passed in CWJC No. 12420 of 2009, in paragraph 39 and 40, has been modified to the extent that the order, dated 22.05.2015, has become infructuous as on the date of the order because by Office Order, dated 12.01.2015, the Office Order, dated 17.01.2011, cancelling the approval of the services of respondent no. 6 was withdrawn.

10. The petitioner, aggrieved by the order, dated 20.04.2016, passed in review application, filed LPA No. 1157 of 2016, which has been disposed vide order, dated 23.01.2018 by Division Bench of this Court, which, taking note of the fact of pendency of the present writ application, observed that if the present writ application succeeds, then it goes without saying that the direction, which will be issued by the Writ Court, will have its consequence. It has further been observed that the parties will surely bring to the notice of the learned Single Judge the decision or the direction, which came to be issued both in the batch of the writ applications as well as the order passed in Civil Review No.176 of 2015, so that reconciliation could be made on the available facts and law.



11. On the basis of the impugned order, dated 12.01.2015, the respondent no. 6 filed CWJC No. 5056 of 2019 for payment of arrears of salary, which has been disposed by order, dated 06.05.2019, with a direction to the respondents to pay the admitted outstanding dues to the respondent no. 6. Against the order, dated 06.05.2019, passed in CWJC No. 5056 of 2019, the petitioner filed LPA No. 676 of 2019, which was disposed on 12.02.2021, with the observation that directions issued for payment of salary to the writ petitioner (respondent no. 6 herein) shall be subject to the final decision to be passed in the present writ application.

12. Learned Counsel for the petitioner argued that respondent no. 6 was appointed in the year 1983 on the fourth post, which was not sanctioned; whereas, the petitioner's father was appointed on the second sanctioned post on 06.07.1982. The impugned order is contrary to the three-men committee report, dated 12.02.2007, in which it has been stated that the services of only those can be recognized whose name is mentioned in the project report, the name of petitioner's father is mentioned in the project report, but the name of respondent n o. 6 is not mentioned in the said report because respondent no. 6 was not found working in the said project school. It has further been argued that there are



only two posts of Peon in the school, in question, and the petitioner's father was already working in the school as Peon on the second post and the husband of the respondent no. 6, namely, Arjun Jha, was working on the first sanctioned post. Therefore, there was no vacant post of Peon in the said School in which the respondent no. 6 could have been appointed and/or her service could be recognized. From perusal of several reports of the District Education Officer, Darbhanga and other Officers, at Annexures 12 to 18, it is crystal clear that the petitioner's father was working continuously from the date of his appointment; whereas the respondent no. 6 was not found working in the said school. The service of respondent no. 6 has been recognized illegally and the genuine claim of the petitioner's father has been rejected on a frivolous ground that in a girls' school, the preference has been given to a lady peon, i.e. the respondent no. 6, over and above the claim of recognition of the services of the petitioner's father.

13. A counter affidavit has been filed on behalf of respondent no. 4, stating therein that from perusal of official records, specifically the records of the school, in question, it is evident that the father of the petitioner has worked continuously from the date of his appointment, i.e. 06.07.1982 till the date of his death, i.e. 07.12.2012, but unfortunately instead of recognition of



service of the petitioner's father, the service of respondent no 6 was recognized, vide order, dated 24.06.2008. The respondent no. 6 never worked in the school, in question, for even a single day prior to the date of recognition of her service.

14. On the other hand, learned Counsel for the respondents argued that only two posts of Class-IV employee was sanctioned in the second phase in the year 1984-1985 and against two sanctioned posts of Peon, three persons were appointed by the Managing Committee, i.e. (i) Arjun Jha, (ii) Late Ramdeo Yadav, appointed on 06.07.1982, and (iii) respondent no. 6 appointed on 22.10.1983. The committee recommended the name of respondent no. 6 on the post of Peon by giving priority to the female peon in the girl's school. Therefore, the post of peon is not available within the sanctioned strength.

15. Learned Counsel for respondent no 6 argued that two posts of male peons in the concerned girl's school was never sanctioned. Therefore, the claim of respondent no. 6 was allowed for being a lady peon. It has further been argued that the Incharge Headmistress did not allow the respondent no. 6 to mark her attendance in order to support the other employees for vested interest. He further submits that pursuant to the report of the three-men committee, the Director, Secondary Education, vide Memo



No. 363, dated 24.06.2008, recognized/approved the service of respondent no. 6 and ordered for payment of arrears of salary.

16. I have heard learned Counsel for the parties concerned and have gone through the relevant materials available on record.

17. From the facts of the case, it appears that there were two sanctioned posts of Class-IV employees in the project school, in question. The husband of respondent no. 6 was appointed against the first post and the petitioner's father was appointed against the second post of Class-IV employee as Peon. It is also clear that the petitioner's father was appointed prior to the appointment of respondent no. 6 in the year 1983. The respondent no. 6 was appointed against the fourth post, which was not sanctioned. On the third post, one Mahesh Jha was appointed by the Managing Committee as a Peon. The respondent no. 6 was appointed against the fourth post of Class-IV employees, which was not sanctioned; whereas, the petitioner's father was appointed against the second sanctioned post of Class-IV employees. In the report, dated 10.05.2006, submitted by the Incharge Headmistress, as per the direction of the Supreme Court, the name of petitioner's father is mentioned; whereas, the name of respondent no. 6 is not there.



18. As per the standard laid down by the three-men committee report, dated 12.02.2007, the services of those employees shall be recognized whose names are mentioned/ included in the project report. In the report of the three-men committee submitted pursuant to the direction of the Supreme Court, there is no stipulation that preference would be given in the girls' school to female peon over and above the claim of persons/peon working/appointed against the sanctioned post. It is the case of the respondents that respondent no. 6 has been given priority over the claim of the petitioner's father on the basis of the fact that the respondent no. 6 is a lady and in the project girls school, lady peon was necessary even though she was not found working against the sanctioned post. In the Government circular also, there is no provision for giving preference/priority to the female candidate/peon in the project school ignoring the claim of the person/employee who was already working against the sanctioned post.

19. The respondent no. 5-Incharge Headmistress has submitted the details of employees for the purpose of recognition of their services in pursuance of the order passed in Civil Appeal No. 6626 of 2001, before the Co-ordinator of the three-men



committee, dated 10.05.2006, in which the name of petitioner's father, as Peon, finds place at serial no. viii.

20. This Court has taken note of the fact that the petitioner's father was appointed against the second sanctioned post and the respondent no. 6 was appointed against the post, which was not available and despite the same, the claim of the petitioner's father for recognition of his service was rejected. The petitioner's father has been denied his legitimate claim by the respondent authorities arbitrarily and illegally in violation of the norms fixed by the three-men committee and the circular of the State Government.

21. Consequently, this Court comes to the conclusion that the petitioner's father had a valid claim on the second sanctioned post of Peon and his services ought to have been recognized by the respondent authorities. The respondent authorities, in stead recognized the services of respondent no. 6, on an imaginary ground that preference was to be given to the lady/female peon in the project girls school. The respondents have failed to produce any such decision/circular or the recommendation of the committee to give priority to the female peon in the project girls school.



22. Thus, I hold that the petitioner's father is entitled to be given all the benefits attached to the second sanctioned post of peon in the project school, in question, including the monetary benefit, from 1989, till his death, i.e. 2012. The consequential monetary benefit, including the arrears of salary and retiral -cum- death benefit of the petitioner's father, shall be paid by the respondent authorities in favour of the petitioner, including other legal heirs, if any, within a period of four months from the date of receipt/production of a copy of this order.

23. Accordingly, the impugned orders, dated 12.01.2015 and 27.01.2017, are set aside to the extent indicated above.

24. Since the petitioner's father died in the year 2012 and respondent no. 6 continued to work from 2008, i.e. from the date of recognition of her service and must have been retired by now, I am not interfering with the services of the respondent no. 6.

25. In the result, this writ application is allowed.

26. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	05-09-2024
Uploading Date	18.10.2024
Transmission Date	N/A

