

(2024) 02 PAT CK 0036**Patna High Court****Case No:** Civil Writ Jurisdiction Case No. 9049 Of 2019

Rajesh Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 12, 2024**Acts Referred:**

- Bihar Rajkiyakrit Primary School Teachers Promotion Rules, 2011 - Rule 8
- Bihar Rajkiyakrit Primary School Teachers (Transfer, Disciplinary Proceedings and Promotion) Rules, 2018 - Rule 13

Hon'ble Judges: Anil Kumar Sinha, J**Bench:** Single Bench**Advocate:** Avanindra Kumar Jha, Namrata Singh**Final Decision:** Disposed Of**Judgement**

1. The petitioner being aggrieved by the order as contained in Memo No. 29 dated 03.01.2019 (Annexure-10) has filed the present writ application for quashing the said order. The petitioner has further prayed for quashing of the resolution dated 22.12.2018 of the District Establishment Committee, Begusarai (Annexure -9) as void ab initio and illegal.

2. The factual matrix of the case is in narrow compass as the petitioner was appointed as untrained Assistant Teacher on 05.09.1999 under the Bihar Rajkiyakrit Primary School Teachers Appointment Rules, 1991 (in short the "Appointment Rules, 1991"). The petitioner passed in-service teachers training examination in the year 2004 and was granted Matric trained pay scale with effect from 01.10.2003. As per Rule 8 of the Bihar Rajkiyakrit Primary School Teachers Promotion Rules, 2011 (in short "Promotion Rules, 2011") after completing eight years of qualifying service in the Matric trained pay scale the petitioner became eligible for promotion as Trained Graduate Teacher in the year 2011. The petitioner along with several similarly situated persons including his juniors qualified for promotion to Graduate Trained Teacher on the basis of cut off date of 31.12.2012, however, the petitioner was the only one who was denied the benefit of promotion.

3. Learned counsel for the petitioner argued that being aggrieved by denial of promotion on the post of Trained Graduate Teacher whereas juniors to the petitioner were granted promotion on the basis of cut off date of 31.12.2012 the petitioner preferred an appeal on 27.10.2014 under the Promotion Rules, 2011 before the appellate authority i.e. respondent no. 4 / Regional Deputy Director, Munger Division, Munger. The appeal of the petitioner was disposed by the RDDE, Munger vide order dated 19.02.2015 bearing Memo No. 271 (Annexure -5) whereby the learned appellate

authority directed the Chairman of the Promotion Committee-cum-District Education Officer, Begusarai to consider the claim of the petitioner for promotion in the higher pay scale / Graduate Trained Scale and dispose the same accordingly. In pursuance of the aforesaid order of the appellate authority, the Chairman of the District Establishment Committee- cum- D.E.O., Begusarai vide Office Order contained in Memo No. 510 dated 18.04.2015 granted promotion to the petitioner on the post of Trained Graduate Teacher. The petitioner thereafter was posted at Upgraded Girls Middle School, Baro, Teghra, Begusarai. Suddenly the respondent nos. 5 & 6 by the impugned order cancelled the promotion of the petitioner without any show cause and without giving any opportunity to the petitioner to defend himself. The impugned order thus is arbitrary and violative of the principle of natural justice.

4. Learned counsel further submits that resolution no. 4 of the minutes of the District Primary Teachers Establishment Committee meeting dated 22.12.2018 is void ab initio inasmuch as the District Primary Teachers Establishment Committee on the basis of notification no. 441 dated 21.03.2018 has rejected the promotion of the petitioner on the ground that as per the said notification the promotion order cannot be issued under single signature. District Primary Teachers Establishment Committee failed to appreciate that the notification no. 441 dated 21.03.2018 by which new rule i.e. Bihar Rajkiyakrit Primary School Teachers (Transfer, Disciplinary Proceedings and Promotion) Rules, 2018 [for short "Promotion Rules, 2018"] was framed, came into force after Gazette notification dated 29.10.2020, as such, on the date on which the impugned resolution was taken by the District Primary Teachers Establishment Committee i.e. on 22.12.2018 the notification no. 441 was not in force. The Promotion Rules, 2018 will come into force from the date of its publication in the official gazette and not before that.

5. Learned counsel also argued that the notification of promotion dated 18.04.2015 was issued by the District Education Officer, Begusarai -cum- Chairman, District Establishment Committee pursuant to the order dated 19.02.2015 passed by RDD, Munger who was the appellate authority under the Promotion Rules 2011. Though by the impugned order the DEO, Begusarai has cancelled the promotion of the petitioner on the ground that promotion order of the petitioner was issued under single signature but in the counter affidavit additional ground / reason has been supplemented by the respondent authority that petitioner passed Graduation Degree (Regular Course) during service period.

6. On the other hand, learned counsel for the State argued that promotion of the petitioner was issued under single signature of District Education Officer, Begusarai, whereas in terms of Rule 13 of the Promotion Rules, 2018 the promotion order has to be issued under the joint signature of the Member-Secretary of the Promotion Committee and the District Education Officer.

7. I have heard learned counsel for the parties and have perused the materials on record. The facts are not in dispute that petitioner was left out while granting promotion to similarly situated teachers including juniors to the petitioner on the basis of cut off date of 31.12.2012, led to filing of a statutory appeal under rule no. 18 of the Promotion Rules, 2011 before the appellate authority i.e. Regional Deputy Director of Education. The appellate authority passed order on 19.02.2015 holding that the claim of the petitioner requires consideration and accordingly directed the Chairman, Primary Teachers Promotion Committee -cum- District Education Officer, Begusarai to consider the case of the petitioner for promotion and dispose his claim accordingly.

8. From perusal of the order passed by the appellate authority it also appears that the appellate authority has taken note of the fact that petitioner acquired Graduate Degree

in 2001 after having obtained departmental permission. In the light of the order passed by the Appellate Authority the District Education Officer, Begusarai passed the order of promotion in favour of the petitioner on the post of Trained Graduate Teacher on 18.04.2015. Pursuant to the promotion order the petitioner joined the post of Trained Graduate Teacher and continued to discharge his duties in the school. Suddenly without giving any show cause notice to the petitioner, the petitioner was served with cancellation order of promotion dated 03.01.2019 which in my opinion is violative of the principles of natural justice and is fit to be quashed on this ground alone.

9. However, even if the ground mentioned in the impugned order for cancelling the promotion of the petitioner, that promotion was granted under single signature is taken into consideration, the same is not sustainable in view of the fact that under Promotion Rules, 2011 there was provision to file statutory appeal before the appellate authority i.e. RDDE if any teacher is aggrieved by the decision of the Promotion Committee not granting promotion. Since the petitioner was denied promotion under the Promotion Rules, 2011 he filed appeal before the appellate authority and his appeal was allowed. Consequently promotion order was issued. The order of promotion of the petitioner thus was issued under the direction of a quasi judicial authority as such the ground taken in the impugned order that promotion order was issued under single signature of DEO, Begusarai and was not signed by the Member-Secretary of the Promotion Committee is completely misconceived and erroneous as such, the order of punishment is also not tenable on this count also.

10. Insofar as objection of the State respondents that the petitioner passed his B.A. examination during service period in the year 2001 is concerned, the same is fit to be rejected in view of the judgment of the Hon'ble Supreme Court in Mohinder Singh Gill and another vs The Chief Election Commissioner, New Delhi & Ors. reported in AIR 1978 SC 851 in which it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Further, the petitioner was appointed as a teacher in 1999 and at that point of time he was a student of Graduation in the Session 1996-1999 in L.N. Mithila University, Darbhanga. The petitioner did not attend classes after joining his service and due to unusual delay in the session the petitioner after obtaining due permission from DEO (Appointing Authority) which was granted to him vide Memo No. 3572 dated 13.11.2000 appeared in the examination and his Graduation result was published in 2001. The Post Graduate Course in the Session 2011-2013 was completed by the petitioner under distance learning mode in the year 2013 for which due permission was granted to the petitioner and the same has been incorporated in the service book of the petitioner also. A Division Bench of this Court in LPA No. 1469 of 2013 had the occasion to examine the circular dated 4th January, 2010 which inter alia provides that a teacher who attends a college as a regular student without the permission of the State Government, the degree or qualification obtained by him will not be recognized and he would not be promoted on the basis of such qualification. The Division Bench held that the circular dated 4th January, 2010 does not have a retrospective effect and the consequences provided under the aforesaid circular would apply to only those Government servants who attend the classes or educational institutions after the date of the circular and obtained a higher qualification without prior permission of the State Government. In the present case the petitioner has obtained Graduate degree in 2001 i.e. prior to the date of the circular dated 04.01.2010.

11. Considering the discussions held hereinabove, the irresistible conclusion is that the impugned order dated 03.01.2019 (Annexure-10) is not sustainable and is hereby quashed.

12. The respondents are directed to restore the promotion of the petitioner as per the promotion order dated 18.04.2015 and to grant him consequential benefits notionally.

13. With the aforesaid observation and direction, the writ application is disposed of.