

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17210 of 2010

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1. Md. Abu Bakr Arif S/O Late Md. Shoib R/O Mohalla- Sandal Nagar Colony, New Azimabad, P.S.- Sultanganj, Patna, Distt.- Patna, Working As Assistant Teacher, Sir G.D. Patliputra Senior Secondary School, Kadam Kuan, Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Human Resources Development Department, Govt. Of Bihar, Patna
3. Director, Secondary Education, Human Resources Development Department, Bihar, Patna
4. Deputy Director, Secondary Education Department, Budha Marg, Patna
5. Regional Deputy Director Of Education, Patna Division, Patna
6. The District Education Officer, Patna
7. Chairman, Bihar Public Service Commission, Bihar, Patna
8. Ram Krishna Prasad, Assistant Teacher Sir G.D. Patliputra Senior Secondary School At Kadam Kuan, Patna, Distt.-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.A. Nasurwarsi
Mr. Raj Nandan Prasad
For the Respondent/s : Mr. (Sc16)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL ORDER

8 13-01-2015 In the present writ application, the petitioner has prayed for quashing of the State Level Seniority list of the Assistant Teacher prepared and published by the respondents for grant of promotion to the post of Headmaster. The said gradation list was prepared and published in the year 2010 (Annexure-6).

The background facts relevant for disposal of the case may be noticed as under:

The petitioner was appointed on the post of Assistant Teacher by the Bihar Secondary Education Board on 12.05.1977



and was posted in Model Institute, Ara as Parsian Teacher. The appointment letter was issued by the District Education Officer (Annexure-1) pursuant thereto, he joined on 04.07.1977. At the time of his appointment, the petitioner had acquired the Fazil degree. It is the contention of the petitioner that in the light of a government decision dated 04.05.1968 (Annexure-2), he was treated in the pay-scale of trained graduate. The petitioner, on the basis of the aforesaid educational qualification, claimed himself to be the trained teacher. A gradation list of the teachers of Nationalised School was prepared on 27.09.2006 (Annexure-4) wherein the petitioner was placed at Sl. No. 4275 whereas respondent no. 8 was placed at Sl. No. 4473. Again an exercise was made and a State Level gradation/seniority list of Assistant Teachers was prepared and published on 21.12.2009 (Annexure-5) wherein the petitioner was placed at Sl. No. 197 whereas the respondent no. 8 was placed at Sl. No. 294. The State Government again recasted the seniority list and circulated a gradation list on 19.05.2010 (Annexure-6) wherein the petitioner was placed at Sl. No. 2067 whereas the respondent no. 8 was placed at Sl. No. 358. In the said list, the petitioner was shown to have been appointed as the Assistant Teacher on 14.02.1983. In earlier gradation list(s), the petitioner was shown to have been appointed as such on



04.07.1977. The grievance of the petitioner is that the respondents have wrongly treated him to have been appointed as Assistant Teacher in the year 1983 although he was appointed, as such, on 04.07.1977. On the basis of the pleadings aforementioned, it has been submitted that the petitioner has wrongly been treated junior to respondent no. 8 inasmuch as his seniority position has been altered treating him to have been appointed as Assistant Teacher in the year 1982. He has relied in this regard on the government notification (Annexure-2) wherein it was held that degree of Fazil would be equal to the trained graduate for the full implementation of the new scale of pay in phased manner beginning from 01.04.1968.

A counter affidavit has been filed on behalf of the State respondents. Learned counsel for the State, per contra, submits that the petitioner was appointed as Assistant Teacher in the year 1977 in Urdu subject with the educational qualification of Fazil. In due course, the petitioner passed the Diploma in Education on 14.02.1983 and subsequently Master of Arts degree in the year 1994. Teachers holding Fazil degree were equated with the trained graduate teachers only for the purpose of grant of scale. Accordingly, the petitioner was allowed the scale of trained graduate teacher with effect from his initial appointment.



However, the teachers holding Fazil degree who were untrained were never treated as trained teachers. Under Section 13 of the Bihar Non-Government Secondary Schools (Service Condition) Rules, 1972, the condition of training was relaxed in the cases of classical language teachers such as Acharya and Fazil and in that context, the government vide letter dated 13.06.1965 (Annexure-2) had resolved to grant the scale of trained graduate to the teachers holding degree of Acharya and Fazil. After the nationalization of the non-government secondary schools, service conditions of such teachers is regulated by the Rules called Bihar Nationalised Secondary School (Service Condition) Rules, 1983 wherein the qualification of classical subject teachers were determined as Acharya and Fazil from any University/Board/Council recognized by the government or M.A/Hons. and having passed the training course. The training degree, therefore, was made mandatory for the Acharya and Fazil teachers in view of the said Rule. The government clarified it vide order dated 02.07.1983 for the purpose of preparation of seniority list under Section 5(kha). Under Section 5(kha) of the aforesaid letter, it was clearly mentioned that the seniority of trained graduate teachers appointed after 18.09.1972 shall be determined from the date of their acquiring the training. The circular of the



government issued on 02.07.1983 has been placed on record by supplementary counter affidavit filed on behalf of Respondent nos. 3 and 4. On perusal of Clause 5(kha), it appears that the government clearly indicated therein that the teachers who have been appointed after 18.09.1972 shall be treated as Assistant Teacher only with effect from the date he/they acquired the training degree. Admittedly, the petitioner passed the training examination on 14.02.1983. The respondents have, therefore, treated him to be in the cadre of Assistant Teacher with effect from the date he acquired the training and therefore the minimum educational qualification. In the light of the aforesaid provisions, the State Government published the seniority list in question wherein the petitioner was included and placed at Sl. No. 2067 treating him to be in the cadre of Assistant Teacher with effect from the passing of the training examination i.e. 14.02.1983. The claim of the petitioner for being placed on the basis of the provisional gradation list is, therefore, not justified. After preparation of the said list, objections were filed and examined by the government in the concerned department and serious error was found therein which was rectified. The claim of the petitioner is based solely on Annexure-2 which, as noticed above, was issued for the purpose of grant of scale of pay only. No other inference

can be drawn which would support the case of the petitioner.

In the light of the discussions made above, this Court finds no merit in the petition questioning the gradation list prepared by the respondents for the purpose of grant of promotion to the post of Headmaster. It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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