

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12239 of 2014

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1. Rizwana Khatoon, D/o- Md. Muslim, W/o- Md. Hafij, Resident of Village- Agari,
P.S.- Babubarhi, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Human Resources Development Department, Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga
4. The District Magistrate, Madhubani
5. The District Education Officer, Madhubani
6. The Block Education Officer, Block- Babubarhi, District- Madhubani
7. The Panchayat Secretary, Gram Panchayat Raj- Sonmati, Block- Babubarhi, District- Madhubani
8. The Mukhiya, Gram Panchayat Raj- Sonmati, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakshmindra Kumar Yadav

For the Respondent/s : Mr. SC28- Ajeet Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 02-04-2015

The Principal Secretary, Education Department, Government of Bihar is a law by himself or at least he feels that what he says is the law of the land. If it is not true then he would not have issued Memo No.607/L dated 15.9.2014, which has the effect of nullifying the applicability of the various provisions of the amended Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rule 2012 as well as the Bihar Nagar Primary Teachers (Appointment and Service Condition) Rule, 2012, especially in relation to those Panchayat Teachers, who have failed the Teachers Eligibility Test (TET) twice and require to be removed.



Prior to the above amendment brought about by the State of Bihar and duly notified, the National Council of Teachers Education gave certain directive upon the State of Bihar, which was mandatory in nature to lay down certain minimum standards and requirement of educational skill, which was mandatory for teachers appointed under the State of Bihar at various levels. The amendment was brought about in the year 2012, both under said directive as well as in conformity with the 73rd constitutional amendment and Article 21A of the Constitution of India. Rules provide for all such previously appointed teachers to pass a qualifying examination to be conducted by the Bihar School Examination Board. The number of opportunities to be given for passing such examination was two. If a person failed to qualify the said examination, he was liable to be removed from the post of a Panchayat or Block Teacher.

Looking at the quality of standards of conduct of examination as well as the quality of teaching, which has been imparted previously, if thousands of such appointed teachers failed in the qualifying examination twice over, this Court is not surprised. But this Court is surely concerned that similar fate should not visit such students, who are going to be taught by such teachers and they may have to face similar problems in life, if they are lucky enough to get an opening at all under the State of Bihar in any capacity.



As usual, many writ applications started trickling into the High Court. Some of the Benches had been indulgent and magnanimous because it was observed that a via media should be found out by the State and such observation also came in the light that the State Government was looking into the matter to find an answer.

As usual, the noise and din created by such teachers got a quick response by issuance of Annexure- A annexed with counter affidavit of the Principal Secretary, Education. Whether it was within the parameters of the law of the land or not is not the concern of powers.

This is what has happened in the present case. Petitioner is one of the person who has approached the Court that she ought not to be removed from the post of a teacher because she has failed in TET examination twice over. There are some other similar teachers, who have been allowed to continue on the basis of the order passed under the signature of the Principal Secretary, Education, Government of Bihar. This communication, which has been annexed in the counter affidavit of the Principal Secretary, indicates that the amended rules are required to be kept in abeyance till the State takes appropriate remedial measure. This is a strange kind of stand to take by the Principal Secretary, Department of Education and the Court

directed the State counsel that under what authority of law a Secretary of a Government can order by an office order to keep the effect of rules in abeyance.

The justification which is sought to be given is that the Government is seriously considering a comprehensive amendment to the rules.

This letter of the Principal Secretary was issued on 15th of September, 2014. For the last six months, without any authority of law, the effect of the rules in question has been kept in abeyance and the teachers, who have failed and otherwise required to be removed from the post for that reason are being illegally allowed to continue on their post.

We are talking about a government with rule of law. The Principal Secretary, therefore, by issuing such a communication has established that he is rule by himself contrary to law. It is in this background that the Court had to observe as above. Such a communication contained in Annexure- A dated 15.9.2014 is not only illegal but in teeth of a statutory provision which cannot be kept in abeyance by an executive or office order issued at any level.

Counsel for the State submits that the Government is on the job and very soon the amended provision will be notified. To this, the Court can only observe that as it is the Government has been

illegally keeping enforcement and implementation of a statutory rule in abeyance on a direction of the Principal Secretary, Education Department, which has been talked about extensively in this order and now they want to continue with that position taking their own sweet time to bring changes to the law.

The power to bring amendments is not the question. It is the illegality, which has been committed by the respondent authority. The question is whether benefit of continuance as a teacher can be given on the basis of Annexure- A?

In the humble opinion of this Court, it is not permissible under law or any precedent. The Court cannot be a mute spectator to a thing of this kind. Therefore, not only the writ application of the petitioner is required to be dismissed but a direction is also issued upon the Principal Secretary that he has to issue a direction to one and all that all such teachers, who have failed in TET twice over, are required to be removed forthwith without any delay within one week from today.

Let a copy of this order be communicated by the State counsel to the Principal Secretary.

(Ajay Kumar Tripathi, J)

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