

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5463 of 2015

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Veena Sinha wife of Shri Chandra Bhushan Sharan Sinha, resident of Kankarbag
S.K. 18, near Malahi Pakri Chowk, P.S. Patrakar Nagar, P.O. Lohiya Nagar,
District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Bihar, Patna.
2. The District Education Officer, Patna.
3. The Block Education Officer (Ghoshwari), District- Patna.
4. The Block Education Officer, Patna Sadar, Patna.
5. The Incharge Principal, Kanya Middle School, Salimpur Arah, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti

For the Respondent/s : Mr. ASHOK KUMAR, SC 11

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 03-07-2015

Petitioner was appointed as an Assistant Teacher. In terms of the Advertisement No. 210/10 recruitment was made through Bihar Staff Selection Commission. The Court is not required to go into all these controversies surrounding the process of such selection. Suffice it to say that ultimately petitioner was selected and appointed and she joined Middle School Shahri at Ghoswari, in the district of Patna on 18.2.2012.

2. Since appointment of the petitioner was made at an advanced age, therefore, she superannuated on 31st March, 2015. The controversy surrounds the non-payment of her salary by respondent

authorities for the period of work she had rendered.

3. The stand of the counsel for the State is that the petitioner did not have the requisite qualification and eligibility to be appointed as an Assistant Teacher. She did not have two years of training behind her, a fact not disputed. However, counsel submits that she had done a six months' training course which was a recognized course at the relevant time and this six months training was supposed to fill the gap or requirement of two years training. On this bona fide belief she applied and got selected as well. There was no hide and seek. Declarations were made and on the basis of the qualification so declared, she was appointed.

4. There cannot be two opinions that petitioner was not eligible to be appointed in the very first place because eligibility in the advertisement requires two years training for such selection and this stop-gap kind of training can never fulfil the requirement of two years training.

5. The omission is already there on behalf of the respondents in not eliminating the petitioner from such selection and appointing her on the post and even accepted her joining till her superannuation.

6. In normal course of thing, the claim of the petitioner could have been rejected outright because an illegal appointment

remains an illegal appointment and there could not be any occasion to give any indulgence to such kind of appointment, which could have been by mere oversight as well but that by itself does not create a right in favour of any person.

7. Counsel for the petitioner, however, asserts the right of the petitioner on the basis of a Division Bench decision of this Court, which was a case of **Gautam Kumar Chaudhary Vs. State of Bihar and others, 2009 (1) PLJR 589**. Para 5 of the said decision states as under:

“As regards the grievance of the appellant that he has not been paid any salary for the period he worked, suffice it to observe that merely because his appointment was found bad in law at a later point of time and that resulted in cancellation of appointment, the appellant cannot be denied his salary for the period he worked.”

8. In view of the said ratio, since work has been taken from the petitioner, from the date of her joining i.e. 18/2/2012 till the date of her superannuation, petitioner would be paid her salary by the respondents. No other right or claim can be made by the petitioner in the given facts and circumstances.

9. Writ is allowed to the limited extent.

10. Payment must accrue in favour of the petitioner within a

period of three months from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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