

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1014 of 2015
IN
Civil Writ Jurisdiction Case No. 3966 of 2015**

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1. Nijamuddin Ansari. Son of Late Shamsuddin Ansari. Resident of village and Post Office - Madan Sirsiya, Police Station - Kalyanpur, District - East Champaran, at present Assistant Teacher, G.M.K. High School, Village & Post Office and Police Station - Islampur, District - Nalanda.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Director, Department of Secondary Education, Secretariate Building, Patna - 800001.
3. The District Education Officer Nalanda at Biharsharif.
4. The Managing Committee of G.M.K. Plus-two High School, through its Secretary Syed Pazle Rahman. Son of Syed Abdul Ali.
5. The Headmaster, G.M.K. Plus two High School. Nos. 4 and 5 are residents of village and Post Office and Police Station - Islampur, District - Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Najmul Hoda

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 23-11-2015

This appeal under Clause 10 of the Letters Patent of this Court has been preferred against the order, dated 24.03.2015, passed by a learned single Judge, in CWJC No. 3966 of 2015, whereby learned single Judge has dismissed the writ application filed by the appellant under Article 226 of the Constitution of India.

2. The appellant had approached this Court by filing the aforesaid writ application under Article 226 of the Constitution of



India, giving rise to CWJC No. 3966 of 2015, seeking quashing of an order, dated 08.12.2014, passed by the District Education Officer, Nalanda, whereby he had refused to approve the appointment of petitioner made by the Managing Committee of the G.M.K. plus two High School, on the post of Assistant Teacher in Sanskrit. The said School is said to be a minority Institution. Refusal to approve the appointment of the appellant by the District Education Officer, Nalanda was on the ground that at the time of his appointment, the appellant was 46 years of age which was more than a permissible upper age limit, as prescribed by the State Government of Bihar, for appointment to the post.

3. This is not in dispute that the State Government of Bihar has generally prescribed maximum upper age limit of 37 years for general category candidates, 40 years in backward Class/extremely backward class candidates and 42 years of Scheduled Caste and Scheduled Tribe candidates, for appointment against various posts under the State Government.

4. Learned counsel appearing on behalf of the petitioner has submitted that for the teachers of minority Institutions no such maximum limit has been prescribed. In support of his submission he has relied upon Section 3 (b) (ii) of the Bihar Non-Government Secondary School (Taking Over Management & Control)

(Amendment) Act, 2011, whereby certain amendments were introduced under the provisions of Bihar Non-Government Secondary School (Taking Over Management and Control) (Amendment) Act, 2011.

5. We do not find any force in the submission made on behalf of the petitioner. The said provision i.e. Section 3(b) (ii) reads thus:-

“(ii) The Managing committee of the minority secondary school may appoint teachers against posts sanctioned by the State Govt, as per eligibility and criteria, prescribed under the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules, 2006 (as amended from time to time) and The Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules, 2006 (as amended from time to time) after obtaining approval of Director, Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director, Secondary Education.”

6. Evidently, thus, the eligibility criteria for appointment in minority Institutions is governed by provisions under the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules, 2006.

7. Rule 4 (Ga) of the said 2006 Rules prescribes the upper

age limits for appointment to be as fixed by the General Administration Department, Government of Bihar from time to time. Admittedly, separate upper age limits have been prescribed by the State Government, as has been noted above in case of the General Category candidates, backward class/extremely backward candidates and scheduled caste and scheduled tribe, candidates. There is no dispute that the petitioner's age, on the date of his appointment was more than the upper the age limit prescribed by the State Government.

8. In such view of the matter, we do not find any infirmity in the order under appeal, which does not require any interference, in the present proceeding.

9. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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