

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9168 of 2008

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Nitu Singh s/o Sri Baij nath Singh , w/o Ranjan Kumar, resident of village
Pakauli, Police Station Bidupur, District Vaishali.

.... Petitioner/s

Versus

The State of Bihar.

2.The Secretary Department of Rural Development and Panchayat Raj,
Government of Bihar, Patna.

3.The Secretary Department of Human Resources, Government of Bihar,
Patna.

4.The Director, Department of Panchayati Raj, Government of Bihar, Patna.

5.District Magistrate, Vaishali.

6.Block Development Officer, Bidupur, Vaishali.

7.The District Panchayat Raj Officer, Vaishali, Hajipur.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

9 20-08-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ
application reads as follows:-

*“For issuance of an appropriate writ, order, or
direction for quashing the letter no. 4633 dated 28.09.2007 issued
by the Director Panchayati Raj by which in complete violation of
earlier Govt. decision he has directed to make appointment to the
post of Secretary Gram Kachahari of only those candidates who
are Matriculate.*

*For issuance of appropriate writ, order of direction for
quashing the order contained in letter No. 204 dated 15.10.2007
whereby and whereunder the petitioner was appointed as
Secretary Gram kachari on the basis of the Educational
Qualification obtaining Madhyama Certificate which is equivalent
to Matriculation but he has been removed from service by not
treating his qualification as madhyama equivalent to
matriculation.*

*For issuance of writ in the nature of mandamus
commanding and directing the respondents to re-instate the
petitioner to the post of Secretary Panchayati Raj at an earliest.”*

3. Learned counsel for the petitioner submits that
when the petitioner was selected and also appointed on



the post of Secretary, Gram Katachari, on the basis of her qualification of Madhyama, the same could not have been terminated merely on guess work of the Block Development Officer, Bidupur. He has also submitted that the view taken by the Block Development Officer as with regard to the qualification for the post of Secretary, Gram Katachari of being only matriculate, is contrary to an order of this Court dated 31.01.2008 in C.W.J.C No. 13905 of 2007. Finally, he has also submitted that after the petitioner was removed from the post of Secretary, Gram Katachari, a person from the same panel which was prepared in the year 2007 has been appointed in the year 2011 and therefore he also cannot be allowed to continue.

4. Learned counsel for the respondents on the other hand having filed counter affidavit and supplementary counter affidavit has explained that appointment on the post of Secretary, Gram Katachari is made under the Rules framed by the State Government, namely, **Bihar Gram Kachachari Sachiv (Niyojan,**



Sewasart and Kartvaya) Niyamawali-2007, which prescribes only the qualification of matriculation as on the date, the Rule was notified on 08.03.2007. Thus, it was found that the petitioner was not matriculate but madhyama and her appointment was cancelled by order dated 15.10.2007 by the Block Development Officer, Bidupur, keeping in view of clarificatory order issued by the Director Panchayati Raj dated 28.09.2007. He has also submitted that this Rule remained unaltered till modification in the Rule was made on 06.01.2009, and as such the petitioner's appointment cannot be now saved on the basis of amended Rule which came into force w.e.f. 06.01.2009.

5. He has further submitted that the order of this Court relied by learned counsel for the petitioner in the case of Santosh Kumar is without considering the import of 2007 Rules. In this regard, he has also submitted that the issue of appointment of a person from the panel from which the petitioner was appointed and later on terminated cannot be gone into in this writ application

because specially when her such appointment was terminated by memo no. 727 dated 06.10.2007, disclosing that the minimum qualification has been changed from madhyama to matriculation.

6. In the considered opinion of this Court, all these submission of the learned counsel for the State has to be accepted for more than one reason. Firstly, if the Rules do prescribe qualification and did not lead any scope or alternative or equivalent qualification, the employer or for that purpose the Court can also substitute the qualification. In the present case, from perusal of Rule-5 of 2007 Rules, it would be very clear that the only qualification prescribed in the Rules, which was notified on 08.03.2007, was the minimum qualification of matriculation instead of madhyama and that remain unchanged till it was sought to be modified by the State Government by order dated 06.01.2009 as contained in Annexure-R/2.

7. Once this position remains uncontroverted that the qualification for the post of Secretary, Gram



Kachchari at the time of appointment of the petitioner was madhyma was the minimum qualification which was changed by memo no. 727 dated 06.10.2007 to matriculation, this Court would find no error in terminating the services of the petitioner which was passed earlier to the amendment made in the Rule w.e.f 06.01.2009. As noted above, the impugned order came to be passed on 15.10.2007.

8. This Court would also not find any error in the decision taken by the Block Development Officer, Bidupur, because the clarification made by the Director, Panchayati Raj in his letter dated 28.09.2007, was only reiterating the provisions as with regard to qualification of matriculation.

9. The reliance by learned counsel for the petitioner on the order of this Court dated 31.01.2008, in C.W.J.C No. 13905 of 2007 in the case of Santosh Kumar Pandey vs State of Bihar is also wholly misconceived only for a simple reason that the order does not consider the statutory Rule or qualification and

as such the aforesaid order has to be treated to be *per incurium*.

10. The issue as with regard to petitioner's challenge to the appointment of one Raghvendra Narayan Singh also must be answered against him for a simple reason that Raghvendra Narayan Singh had resigned on 06.01.2012 and after more than three and a half years I.A. No. 5649 of 2015, has been filed on 16.07.2015 assailing such appointment. Thus, there was no reason to appoint the next candidate in the merit list from the same panel whose life had come to an end, the day Raghvendra Narayan Singh was appointed and in fact had also remained in service for several years before tendering his resignation. Thus, the vacancy of Mr. Singh on account of his resignation has to be advertised and filled up in accordance with law.

11. Repeated reference to the aforesaid order of the learned Single Judge dated 31.01.2008 in the case of Santosh Kumar Pandey (supra) by trying to rely on the Government decision as with regard to equivalence of

the qualification of madhyama on the basis of a Government decision dated 11.01.1999, will also be of no use and avail. The Government may issue any order for equivalence of the qualification but if the statutory Rules do not provide for such equivalence in the qualification, the general Government order by way of an executive instruction cannot be made applicable *ipso facto* inasmuch as, it is well settled that an executive instruction or order cannot supplant the statutory Rules.

12. That being so, this writ application is wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Ranjan/-

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