

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1412 of 2012

IN

Civil Writ Jurisdiction Case No 14830 of 2011

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1. Shanker Mahto, At Present Posted At Primary School Dangraha, As Panchayat Teacher, P.S.- Sri Nagar, District- Purnea Son Of Late Harihar Mahto, Resident Of Village- Ranibari, P.O. Khokha, P.S. K. Nagar District Purnea

2. Savitri Devi At Present Posted At Primary School Sonapur, As Panchayat Teacher, Sri Nagar, District- Purnea Wife Of Sri Moti Lal Sah, Resident Of Village- Khokha, P.S. K. Nagar, District Purnea

.... Appellant/s

Versus

1. The State Of Bihar, Through Principal Secretary H.R.D. Bihar, Patna

2. The Director Primary Education, Bihar, Patna

3. The Deputy Director Primary Education, Bihar, Patna

4. The Commissioner, Purnea

5. The Collector Purnea

6. The District Superintendent of Education, Purnea

7. The Block Education Officer, Officer Srinagar Purnea

8. The Headmaster Primary School Dangraha Srinagar Purnea

9. The Head Master Primary School Sonapur, Srinagar, Purnea

.... Respondent/s

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For the Appellant/s : M/s Pramod Kr Mallick & Anamika, Advocates

For the S t a t e : Mr Rajesh Kumar, AC to GP XXVIII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 24-07-2015

We have heard learned counsel for the State and learned counsel for the writ petitioners/appellants and with their consent, this appeal is being disposed of at this stage itself.

2 The appellants were the unsuccessful writ petitioners. They have educational qualification of Up Shastri granted by

Kameshwar Singh Sanskrit University, Darbhanga, a University constituted under the Bihar Universities Act.

3 Pursuant to advertisement issued for recruitment of Primary Teachers at Panchayat Level, the petitioners applied. The minimum qualification required was Intermediate. It is not in dispute that for the said recruitment process, State Government had declared that “Up Shastri” would be equivalent to Intermediate Level of studies. Writ petitioners/appellants were selected and appointed as Teachers in a Panchayat Primary School. They were later dismissed not on account of any misdemeanour but in view of the Memo of Principal Secretary, Human Resources Department, Government of Bihar No 4240 dated 15.11.2007 which was Annexure A to the counter affidavit of the State in the writ proceedings. The content of that Memo was that as Moulvies were not allowed to be appointed in School where Urdu was not the subject being taught, accordingly, inter alia, persons holding Up Shastri qualification should not be appointed in Schools not teaching Sanskrit. The learned Single Judge by the judgment under appeal dated 19.03.2012, relying upon this Circular, held that the writ petitioners/appellants were rightly removed from service and further directed the Principal Secretary to enforce the said Circular with all its rigors. Being aggrieved, this intra-Court Appeal.

4 We regret our inability to accept the judgment of the



learned Single Judge correct either on fact or in law. It may be noticed that this very Circular first came up for consideration before this Court in *CWJC No 12456 of 2008*. It was severely criticized and quashed by judgment and order dated 20.11.2008 by Hon'ble Mr Justice Shiva Kirti Singh, as His Lordship then was. This judgment was again followed by this Court in *CWJC No 13478 of 2009* which was allowed on 12.01.2010 clearly holding that the Circular aforesaid had already been quashed and could not be relied upon for any action. The similar view had been consistently followed except by the learned Single Judge in this case.

5 We are of the view that the learned Single Judge erred in placing reliance on the said Circular once it had been quashed by this Court and held to be invalid repeatedly. This probably happened because the learned counsel for the writ petitioners/appellants or for that matter, the State Counsel probably did not bring to the notice of the learned Single Judge, the earlier judgments.

6 Here, we would like to point out another aspect of the matter. If we look to the Rules that is Bihar Panchayat Primary Teachers (Recruitment and Service Conditions) Rules 2006 and, in particular Rule 6 thereof, it clearly provides that a Moulvi can only be selected and appointed in those Schools in which Urdu is being taught. There is no such provision in respect of Up Shastri or Vocational Training Course, both of which have undisputedly been

given equivalence to Intermediate for the said process of recruitment. State was aware of this that it was only Moulvi who were excluded statutorily by the aforesaid statutory Rules. The principle of expressio unius est exclusio alterius would apply. What is specifically excluded will only be excluded and all others, not contemplated, cannot be excluded. In other words, specific mention of one excludes all others. The statutory provision cannot be extended by mere Circular issued. The Rules have never been amended.

7 Thus, we are unable to uphold the order of the learned Single Judge nor the order of dismissal as passed as against the writ petitioners/appellants. Both are set aside. It is directed that within one month from today, the writ petitioners/appellants would be reinstated. However, as the writ petitioners/appellants have not worked for the period during which they had been wrongly removed, they shall be entitled to only 20% of the wages for that period. There shall be continuity of service. This order of this Court shall be complied by the respective Panchayat Secretary within one month.

8 This Letters Patent Appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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