

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7254 of 2015

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1. Anil Kumar, Son of Late Brinda Prasad Sharma, Resident of village - Badipur, Post - Chiraura, Police Station - Naubatpur, District - Patna.
 2. Vijay Kumar, Son of Late Bidyanand Tiwari, Resident of village- Mohammadpur, Police Station - Bikram, District- Patna.
 3. Bhuvneshwar Kumar, Son of Srideo Nandan Singh, Resident of village- Chuthiya, Police Station - Bikram, District - Patna.
 4. Narendra Kumar, Son of Sri Bhuvneshwar Sharma, Resident of village- Gopalpur, Police Station - Bikram, District - Patna.
 5. Raj Kishore Sharma, Son of Sri Kamla Singh. Resident of village - Chainpur, Police Station - Naubatpur, District - Patna.
 6. Rajeshwar Prasad Sharma, Son of Mundrika Prasad Sharma, Resident of village- Tarwa, Post - Arap, Police Station - Naubatpur, District - Patna.
 7. Ajay Kumar. Son of Late Sudarshan Kumar, Resident of village - Tararhi, Post- Bela, Police Station - Naubatpur, District - Patna.
 8. Lalit Mohan Prasad. Son of Late Shiv Sharan Rai. Resident of village - Chak- Chehaul, Post + Police Station - Naubatpur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Education, Government of Bihar, Vikas Bhawan, Patna.
2. The Director, Primary Education, Government of Bihar, Vikas Bhawan, Patna.
3. The District Education Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihar Singh, Advocate.
For the State	:	Mr. Lalit Kishore, PAAG.
		Mr. Bishwa Bibhuti Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Dated: 27th April, 2016

Heard learned counsel for the parties.

The challenge, in the present writ application, is to the validity of Rules 10 and 11 of the Bihar Nagar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2012 (hereinafter referred to as the 'Rules') and to declare them

invalid/*ultra vires*.

Learned counsel for the petitioners submits that the petitioners are trained candidates having requisite qualification and have been awaiting their appointments since 1991 due to the fault on the part of the State authorities. It is stated that Nand Kishore Ojha and others had challenged the correctness of the Advertisement for such recruitment, dated 12.12.2003, to the extent, where untrained candidates were allowed to be appointed as teachers in Government schools, which was against the norms fixed under the National Council for Teachers Education Act and Rules. It is submitted that the writ petitions being C.W.J.C. No. 13246 of 2003 and analogous cases were disposed off by order, dated 1st July, 2004, wherein, besides other directions, the State Government was directed to proceed with the recruitment taking into account the totality of the circumstances and, having reckoned the viability of trained teachers, consider the recruitment of untrained teachers, who will be given in-service training, should the occasion so arise. It is submitted that the matter travelled to the Supreme Court and pursuant to the directions of the Supreme Court, the State Government was required to make appointments and, finally, in the contempt petition filed before the Hon'ble Supreme Court, a direction was given by order, dated 09.12.2009, to fill 34,540 vacancies, shown in the advertisement, to meet the claims of the trained teachers, who, at the relevant point of time, were available



for being appointed on regular basis, notwithstanding the number of trained teachers available as a one-time measure to give effect to the undertakings, which had been given on 18th January, 2006, and 23rd January, 2006. The same was to be filled up from amongst the trained teachers, who were available in order of their seniority. It was indicated that this would be done on a one-time basis and must not be taken as the regular practice to be followed (as per paragraphs 22 and 23 of the said order). It is submitted that the petitioners were not appointed and others were appointed, who were not *bona fide* candidates as recently, pursuant to the orders of a Division Bench of this Court, in the vigilance enquiry, it has been found that there were many persons, who had forged and fabricated degrees. It is submitted that even unqualified and ineligible candidates have also been appointed. Learned counsel submits that in view of the aforesaid, the petitioners, who are not only trained but have also qualified in the Teachers Eligibility Test, should be appointed to maintain the purity of the system for which the age fixed for such recruitment be relaxed. He further submits that Rule 10 of the Rules prescribing an upper age limit should not be given effect to, at least, in the case of the petitioners as they were fighting this battle since very long and, thus, obviously may not fulfill such criterion, but being qualified otherwise, they should not be denied an opportunity. Further, with regard to the procedure prescribed, it is submitted that the petitioners, being applicants from before,

cannot be subjected to the criteria and procedure laid down by the Rules, which came into force only in the year 2012. Learned counsel, in the alternative, submits that at least, the said Rules may not be given effect, while considering the case of the petitioners for such employment.

Learned Principal Additional Advocate General opposes the writ application and submits that the challenge, in the present writ application, is misconceived as Rules 10 and 11 prescribe the age limit and the procedure for such appointment respectively. It is submitted that any employment is for a specific purpose to ensure that the person so employed can be of service for at least a minimum period so that he can contribute to the system and, thus, fixing of upper age limit is always one of the criteria laid down for the purposes of any employment under the State. It is submitted that in the present case, the age limit has been fixed as per the age limit which is notified for employment under the State Government and, thus, cannot be said to be arbitrary or unreasonable. As far as the procedure for appointment is concerned, it is submitted that none of the terms is violative of any constitutional or other legal requirements and, moreover, it is open to the State Government to lay down the procedure and modalities of any recruitment process, which has been so done. Learned counsel submits that the Hon'ble Supreme Court itself made it clear under its order, dated 09.12.2009, that the exercise would be done on a one-time basis and must not be



taken as the regular practice to be followed and thus leaves no scope for granting any relief to the petitioners as the said exercise has been completed and if at all the petitioners feel that the same has not been done, the only remedy left for them is to approach the Hon'ble Supreme Court under its appropriate jurisdiction. He has also relied on a Division Bench decision of this Court in the case of **Bijendra Kumar Singh vs. State of Bihar** reported in **2015(3) PLJR 370**, wherein it has been held that persons, who had approached the Supreme Court, alone are not entitled to be considered against the left over vacancies, irrespective of their merit, as otherwise meritorious candidates, who were either handicapped from or did not feel the immediate necessity to approach the Court, a less meritorious candidate, who has rushed to the Court, cannot steal over the march. It is, thus, submitted that the petitioners cannot claim preference for any relaxation once formally the Rules have been issued and implemented.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court does not find any substance in the contention of the learned counsel for the petitioners. No infirmity has been pointed out in Rules 10 and 11 of the Rules to show that they are unreasonable, arbitrary or against any constitutional or statutory provision and, thus, challenge to the same cannot be sustained. The alternative plea of the petitioners for consideration of their cases without giving effect to Rules 10 and 11 also cannot be accepted for the

simple reason that the Hon'ble Supreme Court itself in its order, dated 09.12.2009, had clearly indicated that consideration had to be done on a one-time basis and must not be taken as the regular practice to be followed. In matters of public employment, every eligible person is entitled to be considered under the laws relating to such appointment and, in the present case, the State Government, having come out with the Rules, no appointment, in violation of the said Rules, is permissible much less to be agitated as a matter of right before a Court of law.

For the reasons aforesaid, we do not find any merit in the application and it stands dismissed.

(Ahsanuddin Amanullah, J.)

I. A. Ansari, ACJ - I agree

(I. A. Ansari, ACJ.)

P. Kumar
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