

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8164 of 2013

Vikas Kumar S/O Late Madan Mohan Kumar R/O Mohalla- Chitrakut Nagar, Road
No. 4, P.O.- Digha, P.S.- Danapur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Education Department,
Government Of Bihar, Patna
2. The Principal Secretary Education Department, Government Of Bihar, Patna
3. The Director, Secondary Education, Government Of Bihar, Patna
4. The Regional Deputy Director Of Education, Patna Division, Patna
5. The District Education Officer, Patna
6. The Secretary, D.A.V. High School, Danapur, Patna
7. The Head Master, D.A.V. High School, Danapur, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 7923 of 2013

Asha Rani W/O Shri Shashi Bhushan Kumar R/O Village- Hemjapur, Post- Sheo
Khund, District- Munger, Presetnly Assistant Teacher, Arya Kanya Uchcha
Vidyalaya, Khagadiya

.... Petitioner/s

Versus

1. The State Of Bihar
2. Director, Secondary Education, Patna
3. The Secretary Bihar Karamchari Chayan Ayog, Post- Veterinary College,
Patna-14
4. The District Education Officer, Munger
5. The Secretary School Managing Committee, Arya Kanya Uchcha Vidyalaya
Khagadia, District- Munger

.... Respondent/s

Appearance :

(In CWJC No.8164 of 2013)

For the Petitioner/s : Mr. Krishna Murari, Sr. Adv.
Mr. Harish Kumar, Adv.

For the Respondent/s : Mr. Manoj Kumar Ambastha, SC-26
(In CWJC No.7923 of 2013)

For the Petitioner/s : Mr. Ashok Kumar, Adv.

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-24
Mr. Bipin Kumar, AC to SC-24

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-08-2016

In both the cases, a common point has been raised and, as such, both the cases are being disposed of by this common order. It will be appropriate to record the fact of both the cases separately to understand the actual dispute relating to both the cases.

CWJC No. 8164 of 2013

In this writ application, the petitioner is challenging the order of the Principal Secretary, Education Department, Government of Bihar as contained in Memo No. 1-15/2012-235 dated 26.2.2013 (Annexure-13) and the order of the Director, Secondary Education, Government of Bihar, Patna vide Memo No. 1063 dated 17.8.2012 (Annexure-8) by which he refused to grant approval with respect to the appointment of the petitioner on the ground that he has attained the age of 41 years and 1 month which is beyond the age limit provided under the Rule and Regulation framed by the State of Bihar. The Principal Secretary, Education Department, Government of Bihar, Patna vide order dated 26.2.2003 (Annexure-13) rejected the appeal as the same was filed beyond limitation period of thirty days. He did not deal with the matter on merit. This matter relates to appointment of the petitioner in D.A.V. High School, Danapur, Patna which is a linguistic minority institution having protection of Article 29 & 30 of the Constitution of India. D.A.V. High School, Danapur, published an advertisement in the daily newspaper on 22.12.2005,



namely, Aaj and Dainik Jagran for the post of Assistant Teacher for the Hindi, English, Mathematics, Science and Geography subjects, preference was given to trained graduate teachers. The petitioner and others applied for the post and looking to the qualification of the petitioner, he was called to face interview held on 28.11.2006 along with four other candidates. In the merit list, two candidates, namely, Jai Prakash Prasad and Kumar Rajesh were appointed as Assistant Teacher of English subject and recommendation was made to the District Education Officer, Patna for approval from the Staff Selection Commission, Bihar, Patna but, the District Education Officer, Patna rejected the claim of the Kumar Rajesh on the ground that his certificate of B.Ed. was invalid, whereupon, as the post of English Teacher remained vacant, three persons were left in the panel, namely, Harendra Prasad, Ajay Kumar Jha and Vikash Kumar (petitioner). The petitioner along with two others were directed to appear in the interview board on 17.7.2009 but, the petitioner was the only person who appeared in the interview and was selected for appointment as an Assistant Teacher of English and, accordingly, the petitioner was given appointment letter no. 35/09 dated 2.9.2009 with stipulation to join the post on 4.9.2009. The Secretary of the school vide letter no. 38/09 dated 15.9.2009 sent his name for approval to the District Education Officer, Patna and the District Education Office, Patna in



turn recommended the case of the petitioner to the Staff Selection Commission, Bihar, Patna for grant of approval but, the same was returned by the Staff Selection Commission, Bihar, Patna to the Director, Secondary Education, Bihar, Patna for granting approval to the appointment of the petitioner. The Director, Secondary Education vide order dated 17.8.2012 rejected the case of the petitioner on the ground as has been assigned that he is aged 41 years and 1 month of age beyond the prescribed age. The petitioner filed appeal before the Principal Secretary, Education Department where he has taken a plea that there is no objection with regard to his educational qualification but, only of age, requested to reconsider the order as contained in Memo No. 1063 dated 17.8.2012 passed by Director, Secondary Education and to quash the same. The order is illegal and not sustainable in law. The appellate authority did not go into the merit of the case, straightway rejected the appeal on the ground of limitation.

C.W.J.C. No. 7923 of 2013

In this case, the petitioner is challenging an order of the Director, Secondary Education, Patna contained in Memo No. 127 dated 4.2.2013 (Annexure-7), whereby and whereunder, he has refused to grant approval to the appointment of the petitioner on two grounds, firstly the petitioner is aged about 42 years and 8 months which is beyond prescribed age of appointment and secondly the

petitioner does not possess the B.Ed. qualification and, as such, the approval cannot be granted to the petitioner.

This matter relates to appointment of teacher relating to Arya Kanya High School, Khagadiya which is a minority institution having constitutional protection. The aforesaid school published an advertisement on 18th of January, 2004 in a daily newspaper, "Pratah Kamal" for the post of Teacher in Mathematics cum Physical Training. Altogether six persons including the petitioner applied for the post, were called for interview on 15.5.2004. The petitioner possesses the B.Sc. Degree with Mathematics with degree of B.P. Ed. from Ishwar Deshmukh College of Physical Education, Nagpur. The petitioner was selected and, in anticipation of approval from the Bihar Staff Selection Commission, the petitioner was handed over appointment letter on 27.5.2004 and, accordingly, she joined the post on 3.6.2004 and the Secretary, Managing Committee of the school sent letter dated 24.6.2004 to the District Education Officer, Khagaria informing appointment of the petitioner, sought approval of her appointment. The matter was referred to the Staff Selection Commission which considered the case of the petitioner, vide letter dated 18.1.2007 addressed to the District Education Officer, Khagaria refused to grant approval of the appointment of the petitioner. On perusal of the letter, it appears that the refusal has been made on more



than one ground, namely, the advertisement was published in Pratah Kamal newspaper whose circulation is very negligible, purposely to prevent proper circulation to general public. Second ground, the Managing Committee failed to provide sufficient material to show that the school, in question, is a minority institution, appears minority status of institutions be suspicious and recorded that the selection has not been made in a proper manner. The letter of the Staff Selection Commission was challenged in CWJC No. 13709 of 2007, the Court held, Pratah Kamal has been recognized by the Staff Selection Commission amongst fifteen newspapers for the purpose of publication of advertisement. The Court has further recorded, prior to 12.3.2005, there is no material to show that the Commission or the Government had prescribed particular newspaper for valid publication of advertisement but, subsequently, Pratah Kamal has been held to be one of the fifteen newspapers where the advertisement could be published. In such circumstances, the Court directed the Staff Selection Commission to reconsider the case of the petitioner for approval and also take cognizance of the fact that the Board has recorded that there is no material to show that the school, in question, is a minority institution as the school was a high school but, the Court had recorded his opinion it was open to the Commission to seek report from the concerned officer of the State Government with regard to



status of the institution and, accordingly, the court has criticized the shifting of onus of proving the institution as a minority institution on the background of the fact that the petitioner was a candidate having no material to show the institution, in question, is a minority institution whereas the State Government and its agency can easily make an enquiry about the status of the said school so much so case of the petitioners was rejected without giving him notices. On the aforesaid grounds, the Court set aside the order of the Staff Selection Commission.

As it appears that the Staff Selection Commission did not reconsider the matter with regard to granting approval, transmitted the matter to the competent authority, namely, Director, Secondary Education who, on consideration of the material on record, refused to grant approval on two grounds, firstly, on age as he was aged 42 years and 8 months on the date of approval, secondly she does not possess the B. Ed. Degree.

Learned counsel for the petitioner has submitted that the Director, Secondary Education misdirected himself, wrongly refused to grant approval as there is no upper age limit for appointment of teacher in the minority institution, only it has been provided, the State would not give any grant with respect to the Teacher who has attained sixty years of age. In such view of the matter, the ground, assigned by

the Director in refusing to give approval, suffers from illegality and is not sustainable in law.

**General discussion with respect to protection to minority
institution under Constitution**

It is well known principle of law that with respect to minority institution, the State cannot interfere in the working of the management of the minority, but have power and jurisdiction for regulating and working of institution. In this regard, reliance can be placed in the case of *The Ahmedabad St. Xavier College Society & Anr. Vs. State of Gujarat & Anr.* reported in 1974 AIR SC 1389, in the case of *Secy. Malankara Syrian Catholic College Vs. T. Jose & Ors.* reported in 2007(1) SCC 386 and in the case of *Sindhi Education Society & Anr. Vs. Chief Secretary, Government of NCT of Delhi & Ors.* reported in 2010(8) SCC 49 wherein it has been held the State has authority to provide guideline, fixing the manner and method of entry of teachers and their educational standard with sole purpose of maintaining standard of minority institution, can march with same pace along with general school but, the Government may regulates, cannot interfere with the working of the Management of a minority institution. It is also a fact that there are three types of minority institutions, first, one which do not require affiliation as well as financial help from the Government, second, those minority schools which do not require any financial



help but requires affiliation of the school and, third one, which requires the government aid as well as affiliation. The minority intuitions which falls in the first category except applicability general law of land, the Government has been precluded to interfere in any manner with the working of the minority institution but in second and third category, the Government has regulatory jurisdiction but would not interfere in the working of the management.

In the present case, the first issue involved for discussion, whether the State Government can refuse to grant approval on the ground of over age, prescribed for appointment of Teacher of State Government with respect to minority institution. The Government of Bihar has framed Rules and regulations by way of regulatory measures providing guideline for appointment of teachers in the school.

In order to decide this issue, it will be relevant to examine the provisions of Bihar Non-Government Secondary School (Taking Over of Management and Control) Act, 1981 as also Bihar Non-Governmental Secondary Schools (Taking over Management and Control) (Amendment) Act, 2011, also require the instructions issued from time to time stipulating requisite qualification for appointment of teachers in the minority institution. Part-V of the Act specially Section 18 (2) deals with the minority institution, postulates

the manner, method and requirements for appointment of teachers in the minority institution. It will be relevant to quote Section 18 of the Act, which reads as follows:-

"Section 18: Recognition of minority Secondary schools:

- (1) The schools declared a minority school under the provision of the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 1976) and the Bihar Secondary Education Board (Second Amendment) ordinance 1980 (Bihar ordinance 82 of 1980) shall be deemed to have been recognised under the provisions of this Act.*
- (2) The State Government may, by notification, recognise as a minority secondary school, such secondary school which has been established by a minority community on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section and which fulfils the prescribed condition of recognition.*
- (3) The minority Secondary school accorded recognition under sub-sections (1) and (2) shall be managed and controlled under the following provisions:-*
 - (a) Every minority secondary school shall have a managing committee registered under the societies registration Act, 1862 and shall have written bye- laws regarding its constitution and function*
 - (b) According to the prescribed qualification laid down by the State Government for the teachers of the nationalised secondary schools and within the number of sanctioned posts, the managing committee of the minority secondary schools shall appoint the teacher with the concurrence of the school service board constituted under section 10 of this Act.*



Provided that while considering the question of giving approval to appointment of any teacher under this sub-section the board shall only scrutinise as to whether the proposed appointment is in accordance with the rules laying down the qualification and the manner of making appointment framed by the State Government has been followed or not, and no more.

- (c) *There shall be rules regarding the service condition of teachers of minority schools based on natural justice and the prevailing law, a copy of which shall be sent to the State Government.*
- (d) *The Managing Committee with the approval of the School Service Board shall have powers to remove a teacher, to terminate his services, to dismiss and to discharge him from service.*

Provided that for the purpose of approval any disciplinary action against the teacher by the managing committee, the Board shall scrutinise whether disciplinary proceedings have been in accordance with the rules and no more

- (e) *Mentally and physically in-capacitated person shall not be appointed as teacher or non-teaching staff of the school*
- (f) *No grant shall be admissible for payment of salary of a teacher or a non-teaching staff if appointed or retained beyond 58 years of age.*
- (g) *Only such fees shall be charged from the students as are prescribed by the State Government. Prior approval of the State Government shall be necessary to charge*

higher fees than what is prescribed.

- (h) *The schools shall be open to inspection on any working day by the authorised inspecting officers of the Education Department, the civil authority and authorised officers of Health Department.*
- (i) *It shall be their duty to obey instructions regarding, admission and transfer of the students, discipline and punishment, records and accounts, curricular and co curricular activity, rules regarding health and cleanliness issued or made by the State Government.*
- (j) *The State Government shall have powers to issue instructions not inconsistent with the provisions of Articles 29 and 30 of the Constitution for efficient management and for improving and standard of teaching and it shall be obligatory for the recognised minority schools to comply with them.*
- (k) *In the event of violation of this section and the rules made thereunder and the instruction issued under it, the said managing committee may make an application within sixty days of the date of the order to the officer authorised by the State Government, against the withdrawal of recognition or withholding or stopping grants and the authorised officer shall, after hearing the case, take his decision and it shall be binding."*

From bare perusal of Section 18(2) specially clause (f) postulates that the minority institution has been authorized to appoint a person as teaching and non-teaching staff. The legislature has not



fixed upper age limit in the matter of appointment, only rider has been provided that the Government will not give any grant with respect to teachers who has already attained the age of 58 years. So the 1981 Act specifically does not provide any age limit for entry in of teachers in the minority institution, so much so, the Government of Bihar issued a circular dated 10.1.1986 wherein in Clause-5 provides that there is no upper limit of age for the appointment of teacher but, a condition has been postulated that after 58 years, the Government would not give any grant with respect of payment of salary of the teachers. It will be relevant to quote Clause-5 of the aforesaid circular which reads as follows:-

“शिक्षकों की नियुक्ति के लिये कोई न्यूनतम आयु सीमा (सिवाय इसके कि वे वयस्क हों) निर्धारित नहीं है। अतः वेतन भुगतान हेतु उम्र का कोई बंधन नहीं होगा। मात्र 58 साल से अधिक उम्र के शिक्षक को वेतन भुगतान नहीं किया जायेगा।”

The Government has brought amendment to Section 18 of the 1981 Act by amending Act, 2011, in Sub-Rule-2, it has been provided that the Managing Committee of minority secondary school may appoint teacher against post sanctioned by the State Government, as per the eligibility criteria prescribed for the Nagar Nikay Secondary and Higher Secondary Employment Rule as amended from time to time and Bihar Zila Parishad Secondary and Higher Secondary

Teacher Rule (Appointment and Service Condition) Rule, 2006 amended from time to time after obtaining approval of the Director, Secondary Education through District Education Officer. Approval of pending cases would be given by the Director, Secondary Education. It will be relevant to quote the amended provision of Rule 18 to understand the effect and change has been brought by way of amendment made in the year 1981.

"3. Amendment of Section 18 of Bihar Act 33, 1982- The clauses (b), (c) (d) and (f) of sub-section (3) of Section 18 of the Bihar Non-Government Secondary School (Taking Over Management and Control) Act, 1981, (Bihar Act 33, 1982) shall be substituted by the following respectively and the following new clause (ff) shall be inserted after clause (f).

"(b)-

- (i) The Managing Committee of Minority School may appoint Headmaster against post sanctioned by the State Govt. as per eligibility and criteria, prescribed for the nationalized secondary school 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.*
- (ii) The Managing Committee of the minority secondary school may appoint teaches 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 High 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.

- (c) *There shall be rules regarding service conditions of Head Master, Teachers and Non Teaching Staff of the Minority secondary schools based on natural justice in and the prevailing law, whereby in addition to other provision there will be a provision of appeal by aggrieved Head master, teachers or non teaching staff against the decision of managing committee as well as provision of review and one copy of the same shall be sent to State Government.*
- (d) *The Managing Committee may terminate from service, dismiss or demote Head Master, Teaches of the school with the approval of the Director, Secondary Education.*
- (e) *In case of appointment of or continuance in service of school of any Head Master, Teacher or non-teaching staff beyond 60 (sixty) years of age, the school will not be entitled to get any grants for such Head Master, Teaching or Non-Teaching staff.*
- (ff) *Any complaint against the decision of Director, Secondary Education under this Section will be filed before the Principal Secretary/Secretary, Human Resources Development Department within maximum period 30 days and his decision will be considered as final."*
- (2) *Clause (e) of sub-section (3) of Section 18 of the Bihar Non-Government Secondary (Taking over of Management and Control) Act, 1981 (Bihar Act, 33, 1982 shall be deemed to be deleted."*



On perusal of the amended provision of 18b(ii), it is clear that for the purpose of appointment of teacher, the provision of Bihar Nagar Nikay Secondary and Higher Secondary Teachers (Employment) Rules, 2006 and Bihar Zila Parishad Secondary and Higher Secondary Teacher (Employment) Rules, 2006 would apply as upper age has been fixed for appointment of teacher in general government school would be applicable on the strength of amendment made in 1981 Act. Learned counsel for the State has submitted by amending the 1981 Act provisions of Bihar Nagar Nikay Secondary and Higher Secondary Teacher (Employment) Rule, 2006 and the Bihar Zila Parishad Secondary and High Secondary Teachers Rule, 2006 have been made applicable with respect to appointment of teacher. In the aforesaid Rule, the upper limit of age has been prescribed for entry in the service of the school and admittedly, the age of both the petitioners is more than the age limit provided therein. When this Court put a question about applicability of amended provision, as the amendment has not been given retrospectivity, learned counsel for the State reiterated the applicability of amended provisions in pending cases taking plea providing bridge in view of stipulation authorizing the Director, Secondary Education to dispose of even the pending cases. When the legislature has given authority to the Director to dispose of old cases, it will be deemed that the entire



amended provision of Section 18 will be applicable with respect to pending cases of appointment in the minority institution. In order to understand the contour and its amplitude of provisions with respect to the upper age limit, it will be proper to examine the amendment made therein. Section 1 of the Amendment Act, 2011 stipulates that the Act shall come into force at once and the Act has been notified by Gazette notification on 27.5.2011. Legislature has not brought any such provision indicating explicitly or impliedly, the amended provision has been made retrospective. In such circumstances, it is a fallacy in the argument of the learned counsel for the State that the criteria which has been provided in 18(b)(ii) will be made applicable even with respect to appointment made prior 2011 when approval of Director is pending. The State counsel in order to substantiate his argument placed reliance on the order passed in LPA No. 1014 of 2015 (Nizamuddin Ansari Vs. The State of Bihar & Ors.) arising out of CWJC No. 3966 of 2015. This Court has called the file of the writ application as well as file of LPA. From the record, it is amply clear that the appointment relates to the post amendment of 1981 Act and, in such circumstances, the fact of that case is quite different to present case as this case relates to prior to the amendment and the amended provision certainly cannot be made applicable, only because stipulation has been made, authorizing Director to dispose of the



pending cases that does not mean that the rest portion of 3(b)(ii) will ipso facto applicable with respect to the qualification and age in the minority institution. The law which was prevalent at the time of appointment will be taken into consideration not the amendment made thereafter has been effected. Merely giving an authority to the Director to dispose of the pending cases does not give any inference of applicability of qualification and the age prescribed in the Bihar Nagar Nikay Secondary and Higher Secondary Teacher (Employment) Rules, 2006 and Bihar Zila Parishad Secondary and High Secondary Teacher (Employment) Rules, 2006. It is well known principle of law, beneficial piece of legislation would be construed liberally, when statutory provision capable of two meanings, the meaning will lean in favour of weaker side, would be applied, reliance can be placed in the case of *All India Reporter Karamchari Sangh & Ors. Vs. All India Reporter Ltd. & Ors.* reported in *AIR 1988 SC 1325*, wherein in Para-19, the Court has held as follows:-

"19. The Act in question is a beneficial legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence even if it is possible to have two opinions on the construction of the provisions of the Act the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is based has to be accepted."



On perusal of 1981 Act and the instruction of 1986 made clear that the Government has not prescribed upper limit of age for selection of the teacher. In such circumstances, this Court is of the view that the ground assigned with respect to age is completely not in consonance with the provision of 1981 Act which was applicable with respect to present petitioner but the amended provision will be applicable only with respect to the advertisement notified on and after 27.5.2011.

In the case of Asha Rani (CWJC No. 7923 of 2013), special feature is involved for consideration. As the Management Arya Kanya High School issued an advertisement for the appointment of Teacher in Mathematics and Physical Training. In such view of the matter, the appointment was to be made of a teacher for Mathematics cum Physical Training. The petitioner has no B.Ed. degree but has degree of B.P. Ed. The Managing Committee of school sought approval for Mathematics teacher and for that B.Ed. is an essential qualification.

In such view of the matter, refusal of approval of appointment of Asha Rani as Mathematics Teacher cannot be faulted though the plea of over age at the time of appointment is not sustainable in law.

Accordingly, the case of Vikas Kumar (CWJC No.

8164 of 2013) is allowed, in consequence, the order of Director dated 17.8.2012 (Annexure-8) and order of Principal Secretary dated 26.2.2013 (Annexure-13) of CWJC No. 8164 of 2013 are quashed.

In view of the aforesaid discussions, the case of Asha Rani in C.W.J.C. No. 7923 of 2013 is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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