

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4401 of 2013

- =====
1. Chandra Bhushan Pd. Singh Son Of Srishivji Pd. Singh R/O Village Post Madhopur Chhatta Ps. Tariyani Distt. Sitamarhi
 2. Ramnilan Singh S/O Ramsharan Mahto R/O Hariharpur Post Sirauli Ps. Righ Distt. Sitamarhi
 3. Bhola Pandit Son Of Rampratap Pandit R/O Ramnagar Post Sirauli Ps. Righa Distt. Sitamarhi
 4. Satyanarayan Rai S/O Late Ramdeo Rai R/O Bishanpur Ps. Dumra Distt. Sitamarhi
 5. Ram Ranjan Thakur Son Of Late Ram Murari Thakur R/O Bengara Po Bengara Ps Saharghat Distt. Madhubani
 6. Ajay Kumar Singh S/O Nagendra Singh R/O Village Belahi Jai Ram Distt, Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department Bihar, Patna
3. The Director Primary Education Bihar, Patna
4. The District Magistrate Sitamarhi
5. The District Education Officer, Sitamarhi
6. The District Programme Officer (Establishment) Sitamarhi
7. The District Programme Officer Sarvaseikba Abiyan Sitamarhi

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa,
Mr. Alok Kumar Jha, Advocates

For the Respondent/s : Mr. Lalit Kishor

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 3-5-2016

Heard learned counsel for the petitioners and learned counsel for the State.

2. In the present writ petition, limited issued has been raised about entitlement of B.A. trained scale on the ground of having acquired M.A. degree, though they have obtained Sahitya Alankar degree from Hindi Vidyapith Deoghar in the year 1985

which has not been recognized to equivalent to the B.A. degree by the State of Bihar for the purposes of granting promotion to the B.A. trained scale. So the factual matrix of this case is that petitioners have acquired Sahitya Alankar degree and on that basis they have obtained M.A. degree.

3. Brief facts of the case is that all the petitioners are assistant teachers in different middle school or primary school, performing their duties satisfactory. For convenience this Court takes the case by Chandra Bhushan Singh, petitioner no.1, by way of example for the purposes of adjudication of this case. Chandra Bhushan Singh was appointed as matric trained teacher in the Middle School Harpur Kalan and at present he is posted at Primary School, Panchor Riga, Sitamarhi. While pursuing the teaching profession he acquired the degree of Sahitya Alankar from Hindi Vidyapith Deoghar in 1995 and later on after due permission he has pursued his P.G. degree and acquired the degree from Nalanda Open University in 2007.

4. The cases of petitioners came for consideration for promotion to the B.A. trained scale which the authority has denied on the ground that petitioners do not have minimum requisite qualification of B.A. as degree of Sahitya Alankar issued by the Hindi Vidyapith Deoghar is not a requisite



qualification for consideration of promotion to B.A. trained scale whereas the claim of the petitioners are that though Sahitya Alankar degree may not be treated to be equivalent to B.A. but when they have acquired a higher degree of M.A. in that circumstances whatever the deficiency were there, all obliterated on account of acquiring the higher degree of M.A.. from Nalanda Open University which has been recognized by the State of Bihar to be a valid degree of post graduate. The action of respondents depriving them the benefit of promotion to B.A. trained scale is an act of hostile discrimination, violates Article 14 and 16 of the Constitution of India.

5. Petitioners in support of their contentions have relied on the judgment of this Court passed in L.P.A. No. 11 of 2014 (Dr.Amresh Thakur v. The State of Bihar & others) dated 27.1.2016 and another order passed on the same line vide L.P.A. No. 1027 of 2014 (Ghanshyam Prasad Singh v. The State of Bihar and others) and judgment of the Andhra Pradesh High Court in the case of G. Ravi Kumar v. The District and Sessions Judge and others, reported in 2008(3) ALD 624=2008(3) ALT 662

6. In contra, learned counsel for the State has submitted that as per the Government Elementary School District Cadre



Promotion Rule, 2011 (hereinafter referred to as “2011 Promotion Rule”) which defines the B.A. trained means such teacher who has obtained B.A. degree from a recognized University and is trained. Emphasis has been given in the definition of B.A. trained, the legislature has purposely not added the equivalent to B.A. whereas in the definition of matric trained mentions degree of matric or inter or its equivalent but in the case of B.A. trained word ‘equivalent’ has purposely been deleted.. In such view of the matter whoever is B.A. trained is only entitled for the promotion to the B.A. trained scale even though he is having a higher qualification will not make him entitle unless he fulfills the minimum requisite qualification for the purposes of granting promotion. In support of his contention he has relied on number of judgments in the case of P.M. Latha and another v. State of Kerala and others, reported in (2003)3 SCC 541, Ganesh Prasad Srivastav v. Punjab National Bank through its Chairman & others, reported in 2004(1) PLJR 387, Dhirendra Kumar Singh & others v. The State of Bihar & others, reported in 2008(1) PLJR 583, two Supreme Court judgments in the case of Chandrakala Trivedi v. State of Rajasthan and others, reported in (2012) 3 SCC 129 and in the case of Jyoti K.K. and others v. Kerala Public Service Commission and others, reported in



Judgment Today 2002 (Supp) (1) SC 85 and further it has been argued by the Principal Additional Advocate General that the Division Bench in L.P.A. 11 of 2014 though made reference of the case of Ganesh Prasad Srivastava (supra) but without discussion moved tangent and granted the relief to the appellant of that case. The Principal Additional Advocate General, did not deny the case of Dr. Amresh Thakur (supra) thus completely covers the present case as in that case also the identical fact and issue was involved as in that case also the appellant had earlier obtained the degree of Sahitya Alankar and on that basis he has acquired M.A. and Ph. D. degree, was claiming to B.A. trained scale and Court has held when he has obtained a higher degree of doctorate degree from a recognized University then said if he is not granted trained scale of pay would be a mockery. When a person has obtained a higher degree the degree of Sahitya Alankar becomes irrelevant and to question the entitlement of B.A. trained scale because Sahitya Alankar is not a good degree of graduation then acquisition of P.G. degree and doctorate degree are to be declared invalid as higher degree removes, whatever, lacunas of disentitlement of B.A. trained scale. If the person has a higher degree he cannot be deprived to B.A. trained scale. It will be relevant to quote following passage of Dr.

Amresh Thakur case:

“The learned Single Judge has virtually noticed the earliest Division Bench judgment of this Court in the case of Ganesh Prasad Srivastava and Others – Versus- Punjab National Bank and Others since reported in 2004 (1) PLJR 387 and held that Sahitya Alankar is not recognized as legal equivalent to graduation. We will not go into the question whether on this issue, the learned Single Judge was correct or not or whether or what is the effect of Division Bench judgment because, to us, the facts are dissimilar and also quite different. Here, there is no dispute that writ petitioner/appellant has a post graduate degree from a recognized University. No one can nor has anyone disputed its validity. The writ petitioner/appellant has a doctorate degree from a recognized University of Bihar. Then to say that he cannot be granted graduate trained scale of pay would be a mockery. If we were to hold that his graduation was irrelevant or illegal or not equivalent to graduation, then we would have to hold that his post graduation and doctorate are also invalid. Those degrees have been earned by the writ petitioner/appellant on his own merit. It is no one's case and no one is contending that they are invalid too. If the writ petitioner/appellant had achieved higher qualification in the shape of MA and Ph D from recognized Universities, they cannot be either wished away or ignored. We would only like to add that whatever may be the position earlier, it is not in dispute that at a particular point of time, Sahitya Alankar from Hindi Vidyapeeth, Deoghar was granted equivalence with graduation for the purposes of joining as teacher. It is now only by virtue of the Rules of the year 2011, effectively, the equivalence has been taken away. Preceding these Rules, it was only for the first time on 27.08.2008 that the State Government issued circular by which equivalence/validity has been withdrawn. This itself presupposes that at least up to 2008, the State was recognizing Sahitya Alankar as equivalent to graduation. Any person, who had earned this citation, cannot be denied benefit but of course any person,

who got it thereafter, cannot claim equivalence.”

7. Learned counsel for the State has submitted that in view of judgments of the Hon’ble Supreme Court and this Court present issue requires reference to a larger Bench as there is conflict of view in the judgments of Dr. Amresh Thakur (supra) and Ganesh Prasad Srivastava (supra) which is also a Division Bench judgment, so request has been made that the matter may be referred to the larger Bench.

8. For acceding this request, this Court will have to examine the judgments of the Hon’ble Supreme Court and the High Court whether present judgment is in conflict with the earlier Division Bench judgment requires consideration by a larger Bench. It is well known principle of law, every judgment has to be examined and to be tested in back ground of its facts and points involved. It will be proper first to consider the judgments of the Hon’ble Supreme Court and later on judgments of this Court, in what facts and context the Courts have decided the cases.

9. It will be appropriate to consider the judgment of P.M. Lata (supra), emphasis has been given to paragraph nos. 10 and 13 of the said judgment. To understand the ratio of the case, it will be appropriate to scan the facts involved in that case and its



effect whether this judgment is dealing with similar facts to the present case. In that case the Government of Kerala has issued an advertisement for recruitment on the post of teacher in the Government Primary School. There the qualification was prescribed of Teachers Training Certification (in short “TTC”). Certain persons who were holding the B.Ed. degree also applied for that post and they were selected. The candidates who were having the qualification of TTC challenged the selection of those having B.ED degree. The learned Single Judge has set aside the appointment of persons who were B.Ed. degree holder and learned Single Judge held that B.Ed. degree holder who are not having TTC having been included in the rank list should be deleted from the list, accordingly directed the public Service Commission to re-arrange the rank list. The Division Bench affirmed the view of the learned Single Judge but he has given a direction to the State Government for amendment of the Rule making B.Ed. degree holder as a requisite qualification for the purposes of selection as a teacher and refused to interfere with the appointment of persons having B.Ed. degree. In that context the Hon’ble Supreme Court in paragraph 10 has held that there is no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and, therefore,



B.Ed. candidates should be held to be eligible to compete for the post and thereafter the Court has held that TTC certificate is given to the teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary and held that B.Ed. degree holders cannot be necessarily be held to be holding qualification suitable for appointment as teachers in primary schools and Court has further said that equity and law should be applied and interpreted equitably but equity cannot override written or settled law. It will be relevant to quote paragraph 10 of the aforesaid judgment:

“10. We find absolutely no force in the argument advanced by the respondents that B.Ed qualification is a higher qualification than TTC and, therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed.

candidates, for the present vacancies advertised, as eligible.”

10. Virtually in the present case the fact is quite different. The difference is that it was a first selection. There the Hon’ble Supreme Court has refused to recognize the contention that B.Ed. degree is superior degree as TTC. So much so TTC training is given specially for the purposes of teaching small children whereas B.Ed. degree is given to teaching the higher classes of children. So in my view, the fact of this case is quite different, has been said in different context and as such it does not apply to the facts of this case as in the present case admittedly petitioners have been working as teachers since long and on the strength of MA. he can be appointed as Principal but he cannot be given B.A. trained scale appears to be very absurd.

11. In the case of Jyoti K.K. (supra) the advertisement was issued for selection to the post of Sub-Engineers, Kerala Electricity Board and as per notification the qualification was prescribed diploma in the Electrical Engineer of a recognized institution after three years course of study. The persons having B.Tech degree were not considered for selection on the ground that they do not have diploma degree which is the minimum qualification and on that ground persons having B. Tech. degree



were not taken into consideration for selection of post of Sub Engineer Electrical. There the Court has said that if a person has acquired a higher qualification in the same faculty such qualification can certainly be stated to presuppose the acquisition of lower qualification prescribed for the post and held that those who are B. Tech. have proper qualification for appointment to the post of Sub Engineer Electrical. It will be relevant to quote relevant portion of the aforesaid judgment:

“....If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognized or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify perse the holders of higher qualifications in the same



faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that every one concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.”

12. In the case of Chandrakala Trivedi (supra) the controversy was raised with regard to the appointment of appellant to the post of teachers for primary and upper primary school. There the minimum qualification was prescribed Senior Secondary School Certificate or intermediate or its equivalent. In that case Chandrakala Trivedi passed the Secondary Examination and got B.A. degree from the Indira Ganchi Open University. Then she got her B.Ed. degree on regular basis from Maharishi Dayanand Saraswati University. She also got M.A. degree from the same University. There the Hon’ble Supreme Court held that the High Court has taken a view that higher qualification is not a substitute of qualification Senior Secondary and intermediate. In that context the Hon’ble Supreme Court said, failed to appreciate the reasoning of the High Court to the extent that it did not consider higher qualification as equivalent to the qualification



passing Senior Secondary examination even in respect of a candidate who was provisionally selected. There the Court has considered the effect of word equivalent in the advertisement which is not the issue in the present case cannot be taken into consideration as 2011 Promotion Rule the word equivalent has purposely been deleted. So the present case is not of much help for the purposes of deciding the present case.

13. In the case of Ganesh Prasad Srivastav v. Punjab National Bank through its Chairman and others, reported in 2004(1) PLJR 387 the matter was related to the promotion in the rank of clerk on the strength of Sahitya Alankar degree issued by the Hindi Vidyapith Deoghar. The factual matrix as well as the premise for consideration in that case is quite different as claim was being made for the promotion to the post of clerk on the strength of certificate of Hindi Vidyapith Deoghar. There the Bank on the basis of circular issued by the Indian Banker Association had advised all the Banks that Sahitya Alankar degree along with English from the Hindi Vidyapith Deoghar was not recognized as to the B.A. degree, as that degree has been provided by the Voluntary Hindi Organization which has effect only with regard to the standard of Hindi prescribed in the equivalent Hindi Examination and it cannot be treated as full-



fledged degree/diploma or certificated awarded by University or Education Boards. In the present case here the appellant is not claiming the benefit on the basis of Sahitya Alankar but as per the claim as he has acquired M.A. degree he should be given B.A. trained scale. He has nowhere claimed that he should be given the benefit on the premise of Sahitya Alankar. As in that case it has been recorded that Government of India has recognized the Organization in question, for the sole purpose of propagation and promotion of Hindi. It provides that in case of employment service, if Hindi is required to be a special qualification then the candidates may be eligible for the said employment but in case any other qualification other than the Hindi is required then the certificate granted by the Voluntary Organizations cannot be treated to be equivalent to a certificate, degree or diploma conferred by the different Universities and the same will not be recognized as qualification of High School, Intermediate or B.A.

14. In the case of Dhirendra Kumar Singh (supra), the question arose that B.Ed degree obtained from an institution which is neither recognized by the State of Bihar before enforcement of National Council for Teachers Education Act (hereinafter referred to as “the NCTE Act”) or B.A degree from



an institution recognized by the NCTE after commencement of this Act. The Court refused to grant relief to those persons. There the Court has held that Rule governing recruitment on any post, the eligibility criterion prescribed for the post and decide other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification to be equivalent to another qualification is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide equivalence. It will be relevant to quote paragraph 7 of the aforesaid judgment:

“7. Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification to be equivalent to another qualification is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teachers’ training courses referred therein are training qualifications of different grades and cannot by any means be equivalent with each other, a priori. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma

course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject.”

15. This judgment is also not applicable to the present case as in the present case there is no dispute that petitioner has obtained a degree from an institution which is not recognized institution by the State of Bihar. There it was not an issue raised that the persons having higher qualification will be treated to be disqualified for the purposes of promotion but the question was, the person who obtained B.Ed. degree from a un-recognized institution, so this case is also not applicable to the fact of the present case.

16. In the case of G. Ravi Kumar (supra) there the person after obtaining High school degree without obtaining intermediate qualification obtained B.A. degree from Open University established under the Act of legislature. This case is also for promotion as person was working as sub-ordinate staff claiming promotion to the post of clerk. His case was not considered as he had not basic qualification of intermediate, the Court held that when he has obtained higher degree, rejected the contention that he does not possess the qualification of Intermediate, is of no relevance. It will be relevant to quote paragraph 13 of the aforesaid judgment:



“13. Therefore, there cannot be any doubt that BRAOU is an University established under Andhra Pradesh Open University Act, 1982, and as noticed by Division Bench in Muthyala Ashok (supra), it is recognized by Government of India as well as Government of Andhra Pradesh for the purpose of recruitment in public services. Indeed Division Bench accepted plea that degree awarded by BRAOU is superior to intermediate qualification prescribed under relevant provision of Ministerial Service Rules. Therefore petitioner herein cannot be said to be disqualified merely because he directly appeared for B.A. examination conducted by BRAOU without basis qualification. Very concept of Open University is to encourage citizens to acquire better qualification ignoring whether or not they were having pre-degree qualification. One should not forget that under Article 51A(j) of Constitution, it shall be duty of every citizen to ‘strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement’. If a citizen acquired higher qualification even though he was denied opportunity to acquire pre-degree qualification by reason of social and economic backwardness, he cannot be turned away on the ground that though he has higher qualification, he lacks basic qualification.”

17. On conspectus of the fact and the issue involved in the present case, this Court is of the view that there is no need for any reference to the larger Bench as the judgments that have been cited by the State are quite on different fact and point of law involved. This Court is of the view that there is no error or there is no any confusion in the order of the Division Bench in the case of Dr. Amresh Thakur (supra) as a person he has obtained higher degree whatever the infirmity was there will be treated to have

been removed as the petitioner has obtained M.A. degree from a recognized institution.

18. In such view of the matter, this Court directs the respondent authority to grant the benefit of B.A. trained scale if the petitioners fulfill other eligibility criterion.

19. Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

U			
---	--	--	--