

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.118 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 15309 of 2011**

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1. Madan Prasad, Son of Late Kameshwar Prasad, Resident of village- Hemanchak, P.O.- Sorampur, P.S.- Naubatpur, District- Patna
 2. Shiva Kumar Prasad, S/O Nandu Ram, R/o Vill.- Abbulodipur, P.S.- Shorampur, P.S.- Janipur, District- Patna

.... Appellant/s

Versus

1. The State of Bihar
2. The Director, Prathmik Siksha, Human Resource Department, Govt. of Bihar, Patna
3. Director, Teachers Employment Appellate Tribunal, Computer Bhawan, Government Girls School, Bankipur, Patna
4. Ashok Kumar Singh, Member District Teachers Employment Appellate Authority, Computer Bhawan, Govt. Girls School, Bankipur, Patna
5. Block Education Officer, Naubatpur, Block, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Advocate.

For the Respondent/s : Mrs. Namrata Mishra, GA-13

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 08-04-2016

Heard learned counsel for the parties.

The present intra-court appeal under Clause 10 of the Letters Patent of the Patna High Court is directed against the order dated 20.03.2012 passed by the learned single Bench in CWJC No. 15309 of 2011 by which the writ petition has been dismissed.

The appellants, who were petitioners in the writ petition, had prayed for quashing of the Letter No. 129 dated



05.02.2011 with regard to petitioner no. 1 and Letter No. 90 dated 28.01.2011 with regard to petitioner no. 2, passed by the District Teachers Employment Appellate Tribunal, Patna (hereinafter referred to as the “Tribunal”), by which their prayer for being considered for appointment on the post of Prakhanda Physical Education Teacher, on the basis of having passed Bachelor of Physical Education (hereinafter referred to as the “B.P.Ed.”) from Nagpur University, was negated.

Learned counsel for the appellants submits that the reason given by the Tribunal that the degree possessed by them was neither recognized by the National Council for Teacher Education (hereinafter referred to as the “N.C.T.E.”) nor was pursuant to a two-year course is erroneous for the reason that the said degree given by the Nagpur University which is a University recognized by the University Grants Commission and further that the appellant no. 1 had passed the examination in the year 1988 whereas the appellant no. 2 in the year 1992, which is prior to coming into force the National Council for Teacher Education Act (hereinafter referred to as the “Act”). It has further been submitted that the B.P.Ed. degree, prior to coming into force of the Act, was for a period of one year and thus, the appellants possessing the said degree have to be treated as possessing the requisite qualification and the insistence of having completed a two-year course for such degree, cannot be imposed in

their case, which would amount to putting a condition with retrospective effect.

Learned counsel for the State submits that the contention of learned counsel for the appellants is misconceived and the writ petition has rightly been dismissed by the learned single Bench. He submits that the B.P.Ed. degree possessed by the appellants is not recognized by the Government of Bihar for the purposes of such employment and without going into the question as to whether Nagpur University is competent to award such degree, as the State of Bihar has not recognized it, there cannot be any plea for consideration of the employment of the appellants based on such degree. Learned counsel further draws attention of the Court to the proviso to Clause 8(3) of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the "Rules"), which clearly stipulates that persons, who are matric or equivalent passed and prior to coming into effect of the Act have passed from a recognized training college/university two years teachers training/B.Ed./B.P.Ed. certificate of two years, shall also be considered, which makes it very clear that only those persons, who possess B.P.Ed. certificate of two years of physical training, prior to coming into effect of the Act, shall only be considered for employment. It is thus, submitted that neither the orders passed by the

Tribunal nor the order of the learned single Bench on the writ petition suffers from any infirmity.

Having considered the rival contentions, this Court is unable to agree with the submissions of learned counsel for the appellants. Once, Rules have been framed and are in place for the purpose of employment on a post on which the appellants aspire to be appointed, such recruitment shall be governed strictly by the provisions of the said Rules. In the present case, it is not in dispute that the appellants possess a certificate of B.P.Ed, which is not recognized in the State of Bihar for such employment and that the said certificate was pursuant to only a one year training course, which is also against the specific provision under the Rules for such employment. As far as the contention of the learned counsel for the appellants that similarly situated persons may be in employment is concerned, the same is noted only for the sake of being rejected for the reason that a court of law cannot permit illegality to be perpetuated or any illegality cannot be a ground for passing any order which creates further illegality, as there cannot be a plea of discrimination based on possession of an unrecognized certificate/degree or precedents which may, at best, be a cause of action for the appellants to move before the authority concerned for setting right any wrong which may have been committed. However,

the same cannot be a ground to pass any positive order in favour of the appellants.

This being the position and coupled with the fact that no challenge has been made to such provisions of the Rules, this Court does not find any ground to interfere in the order impugned.

Accordingly, the appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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