

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.934 of 2015

Along with

Interlocutory Application No. 3946 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 23179 of 2013

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Usha Kumari, daughter of Shri Daroga Sinha, wife of Shri Vermeshwar Singh, resident of Village- Saraut, P.O.-Bhagar, Police Station- Sisawan, District-Siwan present posted and working as in charge head mistress in Govt. upgraded Middle School, Saraut, Anchal -Sisawan, District-Siwan.

.... Appellant/s

Versus

1. The State of Bihar .
2. The Principal Secretary Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Magistrate, Siwan.
5. The Deputy Development Commissioner cum Chairman, District Education Establishment Committee, Siwan.
6. The District Education Officer, Siwan.
7. The District Programme Officer (Establishment), Siwan.
8. The Block Education Officer, Sisawan, District-Siwan.
9. Shri Bhagwan Jee Prasad at present assistant teacher in Govt. upgraded Middle Scholl Saraut, Anchal-Sisawan, District-Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arjun Prasad Kunwar, Advocate.

For the Respondent/s : Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22-08-2016

Re.: Interlocutory Application No. 3946 of 2015

The application is for condonation of delay of 32 days in filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 32 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 934 of 2015



The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 09.01.2015 wherein challenge to the communication dated 06.09.2013 issued by the Director, Primary Education, Bihar, Patna to all District Education Officers remained unsuccessful. By the said order, a direction has been issued as follow up action to the order passed by this Court in C.W.J.C. No. 6724 of 2008 (Meena Sinah vs. The State of Bihar & Ors.) decided on 23.01.2012. In the said case, a direction was issued that the office of the Headmaster should not be given to an ad hoc teacher.

The appellant was engaged as a *Prakhand* Teacher under the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as the '2006 Rules') against a vacant post and was assigned the duties of incharge Headmistress on 13.04.2013. The respondent no. 9 a regular Assistant Teacher was posted in the said Panchayat. He has been directed to take charge from the present appellant as the incharge Headmaster in view of the circular issued by the State Government.

The argument of learned counsel for the appellant is that the post of an Assistant Teacher is an ad hoc arrangement; therefore,

respondent no. 9 should not have been given charge of the post of Headmaster.

This Court in C.W.J.C. No. 6724 of 2008 in Meena Sinha's case (supra), said to the following effect:

“It would become clear that they are not even regularly appointed teachers whose appointment in fact has been made only on fixed salary and are not even entitled to draw Dearness Allowance, House Rent Allowance, Medical Allowance, Transport Allowance etc., like regularly appointed teachers under the aforesaid 1993 Rules.

The question, therefore, would be as to whether these Panchayat Teachers could qualify for being promoted on the post of Headmaster/ Headmistress in an Elementary School in terms of 1993 Rules or the recent 2011 Rules. From the conjoint reading of Primary Teachers Appointment Rules-1993 or promotion Rules-2011, it would be clear that only regularly appointed Matric Trained Teacher having earned the promotion as a B.A trained teacher would qualify for promotion on the post of Headmaster/ Headmistress in an Elementary School. In fact 1993 Rules also prescribes the qualification of Post Graduation apart from being trained as a condition precedent for promotion on the post of Headmaster/Headmistress of an Elementary School. It is true that the promotion Rule 1993 have been repealed by another statutory Rules dated 01.09.2011 namely, Bihar Rajkiyakrit Prarambhik Vidyalaya Shikshak Rules 2011(hereinafter referred to as the 2011 Rules), wherein, the post of Headmaster has to be filled up from amongst the Post Graduate trained teacher in grade-I or Grade-II of graduate trained teacher and in absence thereof even from amongst the graduate trained teachers with four



years minimum experience but then such promotion has to be confined only to the teachers of the district cadre which has been exclusively defined in Rule-2(XII) of 2011 Rules to mean such teachers who have been appointed in the Primary School in the pay scale. Thus on an over all review of the statutory Rules, it becomes clear that the Panchayat Teacher can never qualify for being promoted on the post of Headmaster /Headmistress in an Elementary School and the post of such Headmaster/Headmistress has to be filled up from amongst the teachers of the district cadre having at least the qualification of being the trained Post Graduate or trained graduate.

Before parting with this Court, in view of the fact that a number of cases of this nature have been now emerging, would direct the Principal Secretary of the Education Department to issue clear directives to all the concerned Authorities in the district prohibiting them to make any arrangement even by way of Incharge on the post of Headmaster/Headmistress in an Elementary/Primary/Middle School by authorizing a Panchayat Teacher to work as Incharge Headmaster/Headmistress. As noted above these Panchayat Teachers are holding special type of appointment and are not members of the cadre of teachers of the district from whom amongst the post of Headmaster/Headmistress has to be filled up either by giving regular promotion or even by making a Current Charge Arrangement. This Court hopes and believes that the Principal Secretary of the Human Resources Development Department with the approval of the State Government would make a firm, transparent and uniform policy for even making arrangement on the post of Headmaster/Headmistress and also by ensuring the posting of at least one person of the district cadre teacher

in all Elementary Schools where the services of Panchayat Teachers are being utilized for imparting education. Such policy decision would be also necessary because the District Teachers Appellate Authority constituted under the Bihar Panchayat Teachers Appointment Rule 2006 are also seized with similar dispute of Incharge Headmaster/Headmistress in an Elementary School.”

In view of the judgment of this Court, the impugned circular was issued. As per the finding recorded therein, a teacher appointed on a fixed salary under 2006 Rules cannot be treated at par with a regular appointed teacher. Therefore, the appellant cannot claim any right for officiating post as Headmaster as such assignment can be given to only a regularly appointed teacher.

In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal and the appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A