

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7779 of 2015

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Bharti Singh, W/o Dr. Subhash Singh, resident of Village- Barheya, P.O. & P.S.-
Barauli, District- Gopalganj.

.... Petitioner

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, Education Department, Government of
Bihar, Patna.
4. The District Magistrate, Gopalganj
5. The District Programme Officer, Gopalganj
6. The District Education Officer, Gopalganj
7. The Block Education Officer, Barheya, Barauli, Gopalganj.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate Nikhil Kumar Agrawal, Advocate
For the State	:	Mr. Madhuresh Prasad, G.P.12 Mr. Prabhat Ranjan, A.C. to G.P.12

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 12 -05-2016

Petitioner claims herself to be an Assistant Teacher in
Home Science working in Shri Ram Swarup Singh Project Girls High
School, Barheya, Barauli in the district of Gopalganj. Since then she
has retired on 30.06.2014. When the writ application was filed, the
prayer of the petitioner was limited to quashing of Annexure-11, dated
05.03.2014, which was a show-cause issued to her by the Director,
Secondary Education, Government of Bihar as to why recognition
granted to her earlier as a Home Science teacher in the said project

school be not cancelled. However, during the pendency of this proceeding, a final order has been passed against the petitioner cancelling the recognition which is now being challenged in I.A. No.7222/2015 as Annexure-15, dated 06.06.2015.

2. As per the averments made in the writ application, petitioner was appointed as an Assistant Teacher in what is known as Sri Ram Swarup Singh Project Girls High School in terms of Annexure-1, dated 21.11.1983 by the Managing Committee and she has been working continuously since then. It is her case that as per the staffing pattern, 9 posts of teachers were sanctioned excluding that of the Headmaster. These sanctioned posts, however, were with regard to the first phase of project schools established in the year 1981-82 as well as the third phase, i.e., 1988-89. She belongs to the second phase of project schools i.e. the year 1984-85. There was some problem with regard to recognition of services of the teaching and non-teaching employees of such project schools established in the second phase. Litigations started. One Ravindra Kumar who was working as an Assistant Teacher in the same school filed a writ application seeking recognition of his service and payment of salary in which the petitioner intervened but her claim was rejected on the ground that in the second phase of project schools, only 5 sanctioned posts including that of the Headmaster was sanctioned and those posts are already full

and occupied.

3. The matter relating to recognition of service of the second phase was agitated by the Sikshak Sangh of the project schools which was taken up at the level of a Full Bench and decided with certain directive. The judgment of the Full Bench is reported in 2000 (1) PLJR 287 (*Project Uchcha Vidyalaya Shikshak Sangh v. State (F.B.)*).

4. The matter did not rest at the level of the High Court. The issue travelled to the Hon'ble Apex Court and the Hon'ble Supreme Court heard and disposed of the matter which is the case of *State of Bihar v. Project Uchcha Vidya. Sikshak Sangh*, reported in (2006) 2 SCC 545. The Hon'ble Supreme Court directed constitution of a Three Man Committee to look into the claims of such project schools as well as individual teaching and non-teaching employees, working in such schools.

5. The Three Man Committee made an enquiry with regard to her school and found 5 posts including that of the Headmaster already occupied. Claim of the present petitioner was rejected by virtue of Annexure-7, dated 21.07.2008 on the ground that no posts were available in the school, as well as in the subject on which the petitioner was working as an Assistant Teacher. Petitioner preferred an appeal before the Director on the ground that Home



Science was included in the group of humanities in terms of the circular dated 04.02.1989, therefore, petitioner had a right for recognition of her service. In terms of Annexure-9, dated 16.08.2012 along with many other teachers, petitioner's service was also recognized, as her name figures at serial no.20 of the notification, i.e., Annexure-9. After this notification, proposal for payment of salary to the petitioner was initiated at the district level. While such issue was still pending, petitioner received a show-cause notice dated 05.03.2014 in terms of Annexure-11, issued by the Director, Secondary Education. By virtue of this notice, the recognition of service given to the petitioner by virtue of Annexure-9 was sought to be undone primarily on two grounds that in the said school, there are only five sanctioned posts including that of the Headmaster, petitioner was shown to be working on the 9th post of Home Science. The subject of Home Science did not come within the approved or sanctioned posts of teachers in the project schools.

6. The petitioner did respond to the said show-cause giving her explanation in terms of Annexure-12, dated 21.07.2014. The authorities being dissatisfied with the explanation offered, issued a second show-cause dated 29.09.2014 which is Annexure-13. The petitioner in the meantime, completed sixty years of age, so superannuated on 30.06.2014, from the school.

7. Now a final order has been passed by the Director annulling the decision taken in Annexure-9 by virtue of the order contained in Annexure-15, dated 06.06.2015.

8. Learned senior counsel representing the petitioner very vehemently argued that the reason and the decision rendered in Annexure-15 suffer from error, factual as well as legal. He insists that there are 9 sanctioned posts of teachers, Home Science is one of the subjects recognized and if these two facts are correct then the impugned order contained in Annexure-15 is required to be quashed.

9. The State has filed a series of affidavits in opposition. In the first counter affidavit filed on behalf of the Director, Secondary Education, respondent no.3 had this to say:

"6. That the 3 Man Committee before deciding the matters of the Project Schools of Phase 1984-85 and the matters of approval of services of their teaching and non-teaching staff, had decided the norms which were approved by the Government. The 3-Man Committee decided to follow the provisions of Government Order No. 142 dated 04.02.1989 and 56 dated 25-01-2000 for subject-wise distribution of posts of assistant teachers, wherein the post of home science teacher was not within the sanctioned posts. On getting the report of the 3-Man Committee, the same was examined in the department as well as at the Government's level. The Government had decided that the eight posts of teachers sanctioned in project schools will be as follows:-

Language-3 (Hindi, English, Sanskrit)

Social Science – 3 Science – 2

On due scrutiny and consideration of the matter, it was found that the petitioner was appointed as a Home Science subject teacher and in the project schools of phase 1984-85, the post of Home science subject teacher was not included in the 8 sanctioned posts of teachers. Therefore, on the recommendation of the 3-Man Committee claim of the petitioner for the approval of his service was rejected vide Memo No.549 dated 21-07-2008.

7. That the Government again considered the matter of approval of services of the teachers of Home Science, Music, Commerce and Bangla subjects and vide Resolution No.294 dated 08.08.2012 and it was decided to include these subjects within the sanctioned posts of the teachers in the project schools of Phase 1984-85. It was further decided that the claim of the teachers of the aforesaid subjects shall be rejected if it is found that their claims are not within the accepted norms. As per the aforesaid decision of the government the services of the petitioner was approved as home science teacher vide memo no-299 dated 16-08-2012.
8. That after issuance of the aforesaid order of approval of services of the petitioner, it was found that as per the Government Order No. 56 dated 25.01.2000, only 8 posts of teachers are sanctioned in the project schools of Phase 1984-85, against which the services of 9 teachers had already been approved. After due consideration of the matter when it was found that the approval of services has been given out of sanctioned posts, the petitioner was served a show-cause vide letter No. 79 dated 05.03.2014. By this letter, the petitioner was asked to give his explanation as to why

not the recognition of his services as an Assistant Teacher of home science subject be cancelled as his services have been approved against nine post, which is not in accordance with the provisions of rules and circulars. (emphasis mine)

9. That on receipt of the reply from the petitioner, the matter was duly examined and considered in the department and the same was placed before the Government for necessary orders. The Government was pleased to order for the cancellation of approval of the services of the petitioner as it was found that her service was approved beyond the sanctioned 8 post. On getting the order of the Government, a detailed order was passed and communicated vide Memo No. 167 dated 06-06-15."

10. In view of the stand taken by the State, effort has been made by the petitioner through rejoinder that it is not 8 posts which have been sanctioned and available in such a school but it is 9 posts and petitioner is also on the 9th post. Though she should have been shown much higher than many other teachers looking at the date of her appointment and that Home Science is one of the subjects which has been recognized and approved by the State Government. The Court directed the Director, Secondary Education to file a specific affidavit with regard to some of the averments in the rejoinder as well as the specific statement made in para-17 of the writ application. The supplementary counter affidavit on behalf of respondent no.3 has been served and filed on 17.03.2016 and since the stand of the Director has

relevance to the dispute, the Court is tempted to reproduce it in toto.

"5. That it is respectfully submitted that vide govt. order no-142 dated 04-02-89, the 8 posts of teachers were distributed subject wise as follows:-

(i)	Language	(3) Hindi, English Sanskrit
(ii)	Humanity	(3) Home Science, History, Geography, Civics, Economics any three according to seniority, legibility and utility
(iii)	Science	(2) Science, Math-1, Biology-1
(iv)	Other Teacher	Minority subject, Music, fine arts commerce (one according to seniority qualification and utility.

6. That 4 Additional posts of teacher were sanctioned vide got. Order no-56 dated 25-01-2000. By this govt. order the distribution of 8 post were made as follow

(i)	Headmaster	1 post
(ii)	Assistant Teacher	8 posts.
(iii)	Clerk	1 post
(iv)	Peon	2 posts

7. That the three men enquiry committee before deciding the matter of approval of teaching and Non-teaching staffs had decided certain norms in which it was decided that the subject wise distribution of posts shall be considered in accordance with the provisions of Govt. order no. 705 dated 12-10-82. In the aforesaid govt. order the post were distributed as follows :-

(i)	Language	(3) Hindi, English Sanskrit
(ii)	Humanity	(3) History Geography Civics
(iii)	Science	(2) Science, Math-1, Biology-1

8. That as regards para-17 of the writ, it is most humbly submitted that in the school in question approval of services of one teacher Sri Braj Kishore Singh was given in English subject vide memo no-556 dated 07-08-90. The services of two more teachers Sri Birendra Kumar Singh and Smt. Asha Kumari were given in Math and Hindi subject vide memo no-02 dated 03-01-93. The services of one teacher Sri Ravindra Kumar was also given in economics subject vide memo no-634 dated 21-10-2000. Thereafter on the recommendation of three men enquiry committee the approval of services of three teachers namely Md. Latif, Sri Ganesh Choubey and Sri Vidya Pati Singh were given in Civics, Sanskrit and Biology subject respectively vide memo no-395 dated 2-1-06-2008. The services of Sri Ahsan Ahmad was given against 8th posts in Urdu subject vide memo no-70 dated 29-03-10.
9. That it is most humbly submitted that in the school in question one Sri Sudershan Tripathi is working on the post of Principal, who was posted on the said post vide memo no.2154 dated 21.08.2012.
10. That after issuance of the order of approval of services of the petitioner, when it was found that as per the Government Order No.56 dated 25.01.2000 only 8 posts of teachers are sanctioned in the project schools of Phase 1984-85, against which the services of 9 teachers had already been approved. After due consideration of the matter when it was found that the



approval of services has been given out of sanctioned posts, the petitioner was served a show-cause vide letter No. 79 dated 05-03-14. After receipt of the reply from the petitioner, the matter was duly examined and considered in the department and the same was placed before the Government for necessary orders. The Government was pleased to order for the cancellation of approval of the services of the petitioner as it was found that her service was approved beyond the sanctioned 8 post. On getting the order of the Government, a detailed order was passed and communicated vide Memo No.167 dated 06-06-15 against which the present writ petition has been filed."

11. After having gone through the various annexures and documents and the clarification issued by the Director with regard to the various teachers, the subjects against which they are working, there cannot be any dispute that the number of sanctioned posts of teachers in such school are only 8. The 9th position is occupied by the Headmaster or Headmistress and all along there is consistent evidence that the petitioner was appointed on the 9th post which is not a sanctioned post by the State Government. This finding had emerged in the report of the Three Man Committee. Based on the same Annexure-7, came to be issued rejecting her claim. Under some mistaken impression, Annexure-9 was issued in favour of the petitioner but when it came to the knowledge of the authorities, after giving adequate opportunity and show-cause to the petitioner, the final decision contained in Annexure-15 has been issued, which is

now subject matter of challenge.

12. Having given an anxious consideration to the submissions and the materials, the Court does come to a considered opinion that the reasons assigned by the Director, Secondary Education, Government of Bihar in Annexure-15 is based on actual state of affairs with regard to the sanctioned posts as well as the status of the subject of Home Science.

13. In view of the above, the Court does not find any infirmity in the rationale and reasoning assigned by the Director in the impugned order contained in Annexure-15, dated 06.06.2015 and the same does not require interference in any manner.

14. This writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J.)

SanjayKumar/-

AFR/NAFR	AFR
CAV DATE	06.04.2016
Uploading Date	12.05.2016
Transmission Date	