

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.393 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 16471 of 2010

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Smt. Malti Devi, wife of Sri Shiv Jatan Prasad and daughter of late Harinandan Sinha, resident of village- Dihra, Police Station- Harnaut, District- Nalanda.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Bihar, Budh Marg, Patna.
3. The District Education Officer, Nalanda, Bihar.
4. The Headmistress, Project Girls High School, Harnaut, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Ram Sagar Singh, Advocate

For the Respondents : Mr. Sunil Kumar Mandal, SC-24 with
Mr. Arjun Prasad, AC to SC-24

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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: 11-07-2016

Heard learned counsel for the parties.

The present intra-court appeal under Clause X of the Letters Patent of Patna High Court is directed against the order dated 26th November, 2014 passed by the learned Single Bench by which C.W.J.C. No. 16471 of 2010 filed by the appellant has been dismissed.



The appellant claims to have been appointed as an Assistant Teacher in Project Girls High School, Harnaut in the district of Nalanda in the year 1984. She further claims to have been given appointment on the post of Assistant Teacher in the subject of Music on the basis of possessing Diploma in Music and later on claims to have enhanced her qualification to that of Prabhakar in Music. The appellant having not been confirmed on the post of Music Teacher in the school in question filed C.W.J.C. No. 853 of 2001 which was disposed off on 08.04.2009 directing the Director, Secondary Education to take decision with regard to the claim of the appellant. The same resulted in order issued under Memo No. 209 dated 05.05.2010 rejecting the appellant's prayer for recognition of her service as Music Teacher which was impugned in C.W.J.C. No. 16471 of 2010. The writ petition having been dismissed on 26.11.2014 has given rise to the present appeal.

Learned counsel for the appellant submits that there are 9 sanctioned posts in each Project School out of which 3 are for the subject of Language, 3 for Humanities, 2 for Science and one for Home Science/Music/Commerce/Bengali. Learned counsel submits that even the report of the District Education Officer dated 24.04.1990 shows the appellant working at Sl. No. 10 in the said school. It is submitted that the person at Sl. No. 7 had deserted the school and,



thus, the appellant ultimately moves to Sl. No. 9 and as per the staffing pattern, her services are required to be recognized by the State. Learned counsel submits that by office order dated 16.08.2012 issued by the Director, Secondary Education, the Government had sanctioned one post of Home Science/Music/Commerce/Bengali, as the case may be, for different schools and recognized the service of such teachers who were working on such post. Learned counsel submits that service of one Pramila Kumari of the same school in the Department of Home Science was not recognized leading her to filing C.WJC No. 16964 of 2012 in which, by order dated 04.12.2012, it was directed that she should be given the benefit which has been given to other similarly situated persons in the discipline of Home Science, by creation of additional post in the staffing pattern since as per order dated 16.08.2012 rejection of the claim of Pramila Kumari was only on the ground that she was overage and her appointment was not within the staffing pattern.

Learned counsel for the State submits that Letter No. 462 dated 24.04.1989 of the District Education Officer, Nalanda clearly indicates that on the basis of inspection done on 18.05.1984 only 7 teachers, excluding the appellant, were found working and only later on the Secretary of the Managing Committee of the school had forwarded a list in which besides the initial 7 teachers, there were 8



more persons, 4 being teachers, one clerk and 3 peons, and the appellant was shown at Sl. No. 9. It was also stated in the letter that the said was beyond the limit of the staffing pattern. Learned counsel, from the counter affidavit, submits that pursuant to the matter being taken to the Hon'ble Supreme Court, as per the directions, a 3- Man Committee was constituted which invited claims of the Project Schools of the year 1984-85 phase from individuals in the prescribed proforma and on receipt of the claims, the same were considered and examined. It is submitted that the appellant also represented before the Committee but the Committee did not recommend the claim of the appellant for approval of her service as the post of Music Teacher was not sanctioned in phase 1984-85 Project Schools. Her claim was, therefore, rejected under Memo No. 536 dated 21.07.2008. The appellant was given opportunity to represent before the Director, Secondary Education, which she did, and after due examination, it was found that as per the decided norms, the post of Music Teacher was not available as per the distribution of subjects within the sanctioned post of teachers and, thus, the claim of the appellant was again rejected. Learned counsel submits that only by Resolution No. 294 dated 08.08.2012 the post of teacher in Home Science/Music/Commerce was included within the sanctioned strength of 8 posts in such Project Schools. Learned counsel submits



that the appellant was appointed to the post of Craft Teacher (*Selai and Bunai*) and there was no sanctioned post of Craft Teacher. It is submitted that initially under Government Order No. 142 dated 04.02.1989, 5 posts of teacher including headmaster was sanctioned in the Project Schools of phase 1984-85. Thereafter, 4 extra posts of teachers were sanctioned under Government Order No. 56 dated 25.01.2000. Learned counsel submits that admittedly the appellant was at Sl. No. 10 and all 8 sanctioned posts of teachers which have been filled up, as per the staffing pattern, are senior and, thus, both on account of her being appointed as a Craft Teacher (*Selai and Bunai*), for which there is no post available and also in view of seniors to her having been appointed and the posts having been filled up, the appellant cannot have any claim in law. Learned counsel submits that even as per the showing of the appellant herself, she was appointed by the Managing Committee on a temporary basis as an Assistant Teacher in the subject of Music only on 26.10.1988 and, thus, at the relevant point of time i.e., in the year 1984-85, she was not appointed on the post of Music teacher and on this ground also her claim that her service be recognized as a teacher of Music is not tenable. Learned counsel submits that the fact that she was initially appointed as a Craft Teacher (*Selai and Bunai*) has not been controverted by the appellant in the reply filed on her behalf and, thus, the appellant cannot claim

for recognition of her service on the post of Music Teacher.

Having considered the rival contentions, we do not find any merit in the present appeal. In the year 1989, as per the policy of the State Government, a post of Headmaster and 4 teachers were sanctioned and thereafter, 4 extra posts of teachers were sanctioned. Thus, it is clear that only 8 posts of teacher were sanctioned as one post was exclusively earmarked for Headmaster. The appellant claiming her right in a Project School of the phase 1984-85 and it being asserted that for the first time she was appointed on the post of Music Teacher, as claimed by herself, though not admitted by the State, on 26.10.1988, itself makes her claim for recognition of service on the post of Music Teacher untenable. It is also relevant to note that the specific stand in the counter affidavit of the State that she was appointed as Craft Teacher (*Selai and Bunai*) has also not been denied and there being no scope of recognition of any teacher on such post, the appellant cannot maintain her claim for such recognition. Further, the 8 posts available in the school in question having been filled up as per the staffing pattern by persons, who are senior to the appellant, the relief sought by the appellant cannot be granted to her.

For the reasons aforesaid, we do not find any error warranting interference in the order passed by the learned Single Bench dismissing the writ petition. Accordingly, the present appeal,

being devoid of merit, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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