

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4687 of 2013

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Anish Kumar Pandey S/O Sri Parash Nath Pandey Resident Of Village Gadar, Post
Office Hussainganj, P.S. Andar, District Siwan.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Director, Secondary Education, Govt. Of Bihar, Budh Marg, Patna.
3. The District Education Officer, Siwan.
4. M.S. High School Cum Inter College, Hussainganj, P.O. + P.S. Hussainganj,
District Siwan Through Its Principal.
5. The Principal, M.S. High School Cum Inter College, Hussainganj, P.O. + P.S.
Hussainganj, District Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhurba Mukherjee, Sr. Advocate
Mr. Nazir Ansari, Advocate
For the Respondent/s : Mr. Madhukar Krishna Sinha, SC-1
Mr. Aditya Nath Pandey, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 22-04-2016

Petitioner seeks quashing of the order contained in memo
no. 65, dated 21.01.2013, passed by the Director, Secondary
Education, refusing to accord the approval of his appointment.
During the pendency of the writ application, the petitioner made
further prayer through I.A. No. 2272 of 2015, contained in para 16,
in view of subsequent development, which is allowed and the same
would form part of the main writ application. In I.A. application the
main prayer is for quashing letter no. 13/203, dated 11.02.2013,
issued under the signature of the Principal, M.S. High School-cum-

Inter College, Hussainganj, Siwan, cancelling his appointment with consequential benefits.

The short facts of the case is as follows:-

The petitioner applied for the post of Assistant Teacher against the advertisement published by the Managing Committee of M.S. High School-cum-Inter College, Hssainganj (for short “the School”) in the daily newspaper “Hindustan Times”, on 15.12.2002. The petitioner had qualification of B.A. (Hons.) as well as M.A. in Psychology. The Managing Committee selected and appointed the petitioner as an Assistant Teacher vide Appointment Letter No. 42/2003, dated 03.03.2003. The appointment of the petitioner was forwarded for approval to the Director, Secondary Education, which was declined vide memo no. 65, dated 21.01.2013 (Annexure-12). As the Director, Secondary Education, did not concur with the appointment, the Principal of the School cancelled his appointment vide letter, dated 11.02.2013 (Annexure-13).

As the impugned order, cancelling the appointment, is fall out of the order, dated 21.01.2013, passed by the Director, Secondary Education, declining approval, the validity of the same has been questioned by the learned counsel appearing for the petitioner. According to the Director, Secondary Education, it is



essential for a teacher of Higher Secondary School to have training qualification from a recognized Institution, in view of Rule 18(3)(Kha) of the Bihar Non-Government Secondary Schools (Taking over of Control and Management) Act, 1981 and Rule 4(3)(ga)(2) of Bihar Government Secondary School (Service Conditions) Rules, 1983.

The petitioner resists the reasoning given by the Director, Secondary Education, primarily on the ground that he has not considered the resolution of the Education Department, dated 05.03.1991, a copy of which is annexed as Annexure-8. Referring to the aforesaid resolution, the petitioner states that as per the Government Resolution, dated 05.03.1991, which is in the name of Governor of Bihar, even untrained teachers can be appointed as Assistant Teachers. He further submits that 1991 resolution would have an overriding effect over the 1981 Act, as it has been framed under Article 309 of the Constitution of India.

In my view, both the submissions need to be rejected. Firstly, the said resolution is with respect to appointment of untrained teachers in elementary schools, namely, primary and middle schools. The resolution in no way states that an untrained teacher can be appointed as Assistant Teacher in High School. Furthermore, there is nothing in the resolution which would

demonstrate that the said resolution has been issued under Article 309 of the Constitution.

The petitioner next submits that 2004 amendment has diluted the rigors of 1981 Act, as per which only trained teachers could have considered for being appointed as Assistant Teacher in a High School. In support of his submission, the petitioner has cited case of Md. Mokhtar Alam, whose appointment was approved by the District Education Officer for minority Azad High School, Banka, though he was untrained. He has placed further reliance upon notification, dated 27.03.2004, issued under the signature of the Joint Secretary, Finance Department, Govt. of Bihar, wherein, it talks of untrained graduate teachers for High Schools. The petitioner further submits that over the period, he has obtained the required training qualification. A copy of the same has been enclosed as Annexure-6.

In view of the facts that the petitioner subsequently acquired training certificate and is B.A. (Hons.) having high qualification of M.A. Psychology, the Director, Secondary Education, would consider his case afresh for purpose of granting approval in accordance with law. In case any such representation is filed, the same would be duly considered in light of the observation made above within a period of three months from the date of

receipt of a copy of this order.

The impugned order contained in memo no. 65, dated 21.01.2013, and, dated 11.02.2013, would be subject to a fresh adjudication by the Director, Secondary Education.

With the aforesaid observation and direction, the writ application is disposed of.

(Samarendra Pratap Singh, J)

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