

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9361 of 2013

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1. Sudhir Ram Son Of Basudev Ram Resident Of Village - Parwa Tola Sant Nagar,
P.S. Murliganj, District - Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principle Secretary, Human Resources Development Department,
Government Of Bihar, Patna
3. The Director, Primary Education, Biha Patna Null Null
4. The Regional Deputy Director Of Education, Koshi Division, Saharsa
5. The Chairman, District Premary Teacher Promotion Committee-Cum-District
Education Officer, Madhepura, District - Madhepura.
6. The District Programme Officer (Establishment) District Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra,
Mr. Dhananjay Kumar Gupta, Advocates.
For the State : Mr. Rakesh Prabhat, AC to SC 21.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-08-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, petitioner is seeking relief for
quashing the order contained in memo no.2391 dated 7.12.2012
issued by the District Programme Officer (Establishment),
Madhepura by which he has rejected the claim of the petitioner
for promotion.

Petitioner has claimed for promotion on the ground that
he has enhanced the qualification of BA and claimed that he
should be given BA trained scale. Petitioner entered into service



as a teacher through Bihar Public Service Commission vide letter dated 28.8.1994. At the time of entry his qualification was I.A. trained. He has taken admission in Evening College, namely, in Lorik Ambedkar Evening College Madhepura and he appeared in the examination in 1996 got B.A. degree with effect from 15.11.1997. So much so he has enhanced qualification of M.A. from the Nalanda Open University in 2002. He has been discharging the duty in the Primary School from 10 A.M. to 4 P.M. and attended the classes of College from 7 P.M. to 10.45 P.M. He has further stated that before appearance in B.A. examination he has obtained permission from the District Superintendent of Education-cum-District Programme Officer (Establishment), Madhepura who has granted permission to the petitioner on 31.12.1995 for appearance in the examination. He has also mentioned in the said letter that after enhancement of qualification benefit will be conferred to the petitioner and for which department has no objection. The District Superintendent of Education-cum-District Programme Officer (Establishment) further gave permission to appear in the M.A. examination conducted by the Nalanda Open University in this manner enhanced his qualification, the petitioner is claiming that he should be granted higher pay scale.



When the matter came for consideration for granting benefit, the District Programme Officer (Establishment) vide office order dated 7.12.2012 rejected the claim of the petitioner for promotion on the ground he got himself admitted as regular student in the College, in view of Clause 2 of letter dated 4.1.2010 written by the Director, Primary Education to all District Magistrate and all District Superintendent of Education, all such degree has been treated to be invalid.

Learned counsel for the State has drawn attention of this Court towards letter of the Director, Primary Education, Patna dated 4.1.2010 where it has been specifically stated that the teacher while discharging the duty cannot obtain the degree by way of regular student at the same period.

Learned counsel for the petitioner submits that this clause does not apply to the petitioner. It will be applicable to those who are attending the day classes and not to the person who got admission in the night College. There is no allegation from any Officer concerned that petitioner has ever absented himself or committed dereliction of duty in discharging the duty.

Learned counsel for the State has placed reliance on Rule 55 of the Bihar Service Code which is as follows:

“55. Unless in any case it be otherwise distinctly



provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues or from a local fund [or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the State Government or Government of India, which operates, or would operate in Bihar, even though its headquarters may be outside the State]”

On the strength of Rule 55 of the Bihar Service Code, learned counsel for the petitioner submits that Government servant during his service period will remain at the disposal of the Government for 24 hours. Teachers are not domestic servant. Teaching is a very noble profession, teachers play very important role in building up-to society. As per great Chankya “A teacher is never an ordinary person. Construction and destruction can be produced in his lap”. Teaching is very important activity on which the base of any nation and culture is established. Good teacher very much required for national building. Unless at grass-root level good teachers are available there cannot be strong foundation of any civilization or a

country. The teaching is one of the oldest and noblest service of the society. Teacher not only shows the right path that student should follow but also prepare the human resources for further development of nation. Teachers have great potential to create great impact in the molding of the next generation, creates politician, engineers, doctors, police man, priest and good citizen. A.P.J. Kalam, our beloved President of India, has written in his autobiography "The Wings of Fire" paid tributes to his science teacher, Shivasubramaniam for his care and guidance. Aristotle said "Those who educate the children are more honoured than they who produce them; for these only gave them life, those the art of living well". It is the teacher who brings his pupil from darkness to light "Tamaso Ma Jotirgamyā". There is saying in Sanskrit "स्वेदेशे पुज्यते राजा विद्वान सर्वत्र पुज्यते". They are discharging the duties which have been assigned to them and if a teacher has enhanced his qualification it is always beneficial to the student and society. Merely persons have enhanced qualification cannot be treated as adverse against them when there is no allegation of disturbing the classes . Letter dated 4.1.2010 issued by the Director will be applicable only to those persons who have attended the classes during the day period as person cannot be a teacher at one place and

student in another place simultaneously. But in a situation when a person has attended class in night it cannot be said that it has committed any crime or illegality in obtaining the higher qualification.

In such view of the matter, order dated 7.12.2012 is hereby set aside and authority concerned is directed to consider the case of the petitioner and grant him benefit of promotion within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ petition is allowed.

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.8.2016
Transmission Date	NA

(Shivaji Pandey, J)