

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7941 of 2013

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Sunil Kumar S/o Sri Balbhadra Prasad Singh R/o Village- Hasanpur, P.S.-
Lakhisarai, District- Lakhisarai. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, Patna
 2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
 3. The Director, Secondary Education, Govt. of Bihar, Patna
 4. The District Education Officer, Lakhisarai
 5. The Head Master, Rajkiya High School, Hasanpur, Lakhisarai. ... Respondent/s
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Appearance :

For the Petitioner/s : Mr. Lalan Kumar no. 1

For the Respondent/s : Mr. S.K. Mandal, SC-24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-05-2016

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

In this case, the petitioner is feeling aggrieved against
the order dated 26th October 2012 passed by Director, Secondary
Education, Bihar Patna whereby and whereunder the prayer of the
petitioner for his absorption in Rajkiya High School, Hasanpur,
Lakhisarai has been rejected.

As per the claim of the petitioner, he was appointed as
Clerk-cum-Librarian, was discharging the duty in the aforesaid
school on the date of take over of the school.

The order of the Director shows that as per the staffing
pattern, 01 post was for Principal, 08 posts for Assistant Teacher,

01 post for Clerk and 02 posts for Peon and there is no post of Clerk-cum-Librarian.

The counsel for the petitioner has drawn attention of this Court to the Resolution of the Government of Bihar dated 24th September 1974 where the Government taking note of financial condition of the private school, recommended that in a school where 400 students have been enrolled, one post for Clerk and one post for Peon were sanctioned and for the school having 401-800 students, two posts for Clerk, four posts for Peon were sanctioned, on this strength, the counsel for the petitioner submits that the petitioner should be treated to be discharging the duty on the post of Clerk.

The counsel for the State has submitted that it is a very old executive instruction of the Government of Bihar, must have modified or annulled in course of time and the petitioner cannot be given the benefit on the basis of 1974 executive instruction.

In paragraph 14 of the counter affidavit, the State has taken a categorical stand that 01 post was for Principal, 08 posts for Assistant Teachers, 01 post for Clerk and two posts for Peon. There was no post for Clerk-cum-Librarian.

Having heard the parties, paragraph 14 of the counter affidavit is a reiteration of the averment mentioned in the order of

the Director dated 26.10.2012, prima facie it appears that there is only one post of Clerk.

As the petitioner has shown the 1974 executive instruction, let the Director, Secondary Education, Govt. of Bihar, examine the case of the petitioner and make an enquiry about the existence of 1974 executive instruction whether this executive instruction was in force or was modified, annulled or substituted by another Notification by the State of Bihar especially on the day of take over of the school and pass the order in accordance with law.

The petitioner is directed to file a detailed representation before the Director along with a copy of this order annexing the Circular which he has placed reliance before this Court. The Director will consider the case of the petitioner and pass a reasoned order within a period of three months from the date of filing of the representation.

With the above observation/direction, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.5.16
Transmission Date	