

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2018 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 12417 of 2010**

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Punam Kumari, wife of Dr. Sunil Kumar and daughter of late Tapeswar Sharma, resident of village - Chehuta, Police Station - Rani Talab (Bikram), District - Patna, at present assistant teacher in Project Kanya Uchh Vidyalaya, Paliganj, Police Station - Paliganj, District - Patna.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department (now Education Department), Government of Bihar, Patna.
2. The Director, Secondary Education, Human Resources Development Department (now Education Department), Government of Bihar, Patna.
3. The District Education Officer, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Ram Sagar Singh, Advocate.

For the Respondents : Mrs. Priya Gupta, A.C. to G.P. 7.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 20-01-2017

The challenge in the present Letters Patent Appeal is to an order passed learned Single Bench on 22nd May, 2015 whereby, the writ application filed by the petitioner was dismissed.

2. The appellant claims to be appointed as an Assistant Teacher in the subject of Hindi in the Project Girls High School, Paliganj, Patna on 26th February, 1985. The Three Men committee constituted in terms of the Supreme Court order reported as (2006) 2 SCC 545(State of Bihar & Ors. Vs. Project



Uchcha Vidya Sikshak Sangh & Ors.). Such Committee has examined the claim of approval of the services of the appellant as teacher and rejected the same on 21st July, 2008 for the reason that there is no post available for her. It was found that one Neelam Kumari was appointed as Assistant Teacher in subject of Hindi on 21st of March, 1983 and her services was approved. Therefore, there is no post of subject of Hindi against which the services of the appellant could be approved.

3. The learned Single Bench has recorded the following findings, which are as follows :

“44. I do not find any merit in this case. From her own showing, the service of one Neelam Kumari, appointed on 21.03.1983 as Assistant Teacher in the concerned Project Girls High School, Paliganj, Patna in subject Hindi, has been recognized. Under the scheme of appointment of Assistant Teachers, two persons could not be appointed to teach Hindi in one school. The petitioner has brought on record an order of this Court dated 04.05.2010 passed in C.W.J.C. No. 3522 of 1995 (Madan Prasad Gupta Vs. The State of Bihar & Ors.) and has submitted that her case is squarely covered by said order of this Court dated 04.05.2010. I am not able to accept the contention as total strength of teachers in a school is not relevant consideration for the purpose of grant of approval of service of a teacher or non-teaching employee. The appointments could have been made within sanctioned strength for different subjects, as indicated above; three posts were provided one each in English, Hindi and Sanskrit. I am of the view that only one Hindi teacher could be appointed in a Project



Girls High School and the authorities rightly refused the petitioner's claim as second post for a Hindi teacher was not available in the said school on the date of her appointment."

4. Learned counsel for the appellant relied upon a Single Judge Bench order passed by this Court in C.W.J.C. No.3522 of 1995 (Madan Prasad Gupta vs. The State of Bihar & Ors. (supra) decided on 04.05.2010 whereby, this Court has directed to consider the claim of the said writ applicant for his absorption in the services as a teacher against the sanctioned strength as on 25th January, 2000.

5. From perusal of the said order, it does not show that any argument was raised or considered in respect of restriction for approval of teacher in the subject as well. It is in pursuance of the order passed by this Court; an order was passed by the Director of Secondary Education, Bihar, Patna on 10th May, 2012 for approval of services of the said Madan Prasad Gupta. A perusal of the order shows that after the order was passed by the learned Single Judge, a review petition was filed, which was dismissed. A contempt petition was also filed. It was during the pendency of the contempt petition, the service of Madan Prasad Gupta was approved.

6. We do not find that the said judgment provides any assistance to the argument raised by the learned counsel for



the appellant. That is not a case where irrespective of non-availability of post of subject, approval for appointment has to be granted. The said order was passed without examining the scheme of approval and, thus, would not be relevant while considering the claim of the appellant for approval of her services. Still further, there cannot be any parity in the illegality. Even if, the services of Madan Prasad Gupta have been approved, that was passed contrary to the scheme of taking over Schools and approval of the services of the teachers, therefore, such approval does not confer any equitable right in favour of the appellant so as to claim in parity in illegality.

7. In view thereof, we do not find any merit in the Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-Narendra

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CAV DATE	NA
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