

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.759 of 2016
Arising out of
Civil Writ Jurisdiction Case No.5622 of 2014

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Nidhi Bhargava W/o- Shri Lokesh Bhargava, Resident of Bishwambhar
Sadan, Justice Raj Kishore Path, P.O. + P.S.- Kadamkuan, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Director, Secondary Education, Department of Education, Govt. of Bihar,
Patna.
3. The District Education Officer, Patna
4. The Managing Committee, Dayanand Balika Uchcha Vidyalaya (Govt. Aided
Minority Secondary School), Represented through its Secretary, Dayanand
Balika Uchcha Vidyalaya, Mithapur, Patna
5. The Secretary, Dayanand Balika Uchcha Vidyalaya, Mithapur, Patna
6. The Principal, Dayanand Balika Uchcha Vidyalaya, Mithapur, Patna
7. The Secretary, Bihar Staff Selection Commission, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi, Advocate
Mr. Sanjeev Kumar, Advocate
For the S.S.C. : Mr. S.S. Sundram, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 04-09-2017

Seeking exception to an order dated 01.03.2016 passed by the learned Writ Court in C.W.J.C. No. 5622 of 2014, whereby an order passed by the Director, Secondary Education on 12.11.2013 cancelling the appointment of the appellant to a private institute receiving aid from the Government, has been upheld, this appeal has been filed under Clause 10 of the Letters Patent.

Facts in nut shell goes to show that in the daily newspaper "Aaj" and various other newspapers published on 02.04.2004, the Managing Committee of Dayanand Balika Uchcha Vidyalaya, Mithapur, Patna, a minority institute receiving aid from the Government, notified vacancies in various subjects of Assistant Teacher. In pursuance to this advertisement issued on 02.04.2004, the appellant herein submitted her candidature for appointment as Assistant Teacher "English". She submitted the application, a Selection Committee was constituted by the Institute and vide order dated 26.06.2004 she was granted appointment to the post and in pursuance to the appointment order granted the appellant joined



on the post on 02.07.2004. The appointment order which was issued on 26.06.2004, which was subsequently notified on 14.09.2005, was forwarded by the institute in question for approval to the State Government to the department in question. It is also an admitted position that on the date when the advertisement was issued and when the appellant was appointed, she had completed 39 years and 7 days as her date of birth was 25.03.1965 and it is also an admitted position that in the advertisement or in the notice issued to the appellant there was nothing to indicate that the maximum age for appointment to the post in question is 38 years. Be it as it may be, the appointment order of the appellant forwarded to the directorate of Secondary Education on 14.09.2005 was kept pending by these authorities for a period of more than 9 years and all of a sudden on 12.11.2013, the Director, cancelled the appointment of the appellant only on the ground that on the date of her appointment she was over age i.e. 39 years and 7 days.

Apart from the fact that the Director slept over the matter for a period of more than 9 years, from the counter affidavit filed by the respondents, we find that for appointment to Government institutes in the State of Bihar initially the maximum age prescribed was 38 years and this was extended to



40 years in case of women candidate with effect from 31st of December, 2010.

Even though the learned counsel appearing for the State vehemently argued that when the appellant was appointed in the year 2004, upper age limit was 38 years but we see no reason as to why the State Government slept over the matter for 9 years, permitted the appellant to work on the post, thereby, permitted, vested right being created in her favour and when the impugned action was taken in the year 2013, the age of appointment to the post had been increased to 40 years. It is also a fact that the age limit fixed and brought to our notice are age limit fixed for appointment on Government post. Nothing has been brought to our notice to indicate as to what is the age limit prescribed for appointment to private institute receiving aid or grant from the State Government. That being so, in the peculiar facts and circumstances of this case, taking note of the cumulative effect of all the factors that are indicated by us hereinabove, we find that the learned Writ Court did not take note of all these vital aspects of the matter and without considering the fact that the appellant was permitted to work for a period of more than about 9 and a half years before the impugned action was taken, that also in an arbitrary and



unreasonable manner, should have interfered into the matter.

This having not been done, we allow this appeal, quash the order passed by the learned Writ Court, direct for regularization of the appellant's appointment and to pay to her all consequential benefit accruing thereto.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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