

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18090 of 2016

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Md. Sabir Akhtar son of Late Abdul Hamid Resident of Village-Badubarhi, P.S.
Babubarhi, District-Madhubani

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Dept. of HRD, GOVT. of Bihar, Patna
2. Collector, Madhubani
3. The Director, Primary Education, Dept. of HRD, GOvt. of Bihar, Patna
4. Regional Deputy Director of Education, Darbhanga
5. District Education Officer, Madhubani
6. District Programme Officer, (EE & SSA), Madhubani
7. Sri Ramashray Prasad, DPO, (EE & SSA), Madhubani
8. Principal, Diet, NARAR, District Madhubani
9. Block Education Officer, Babubarhi, District-Madhubani
10. Sri Parshuram Mochi son of not Known Block Education Officer, Babubarhi, District-Madhubani
11. The State Project Director, State Project, Bihar Education Project Council, Shiksha, Bhawan, Rashtra Bhasha Parishad, Parishar, Saidpur Rajendra Nagar, Patna
12. State Programmme Officer, Bihar Education Project Council, Shiksha Bhawan, Rashtrabhasa Parishad Parisar, Saidpur, Rajendra Nagar, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 15628 of 2016

Md. Sabir Akhtar Son of Late Abdul Hamid Resident of village - Babubarhi, P.S.
Babubarhi, District Madhubani

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Dept. of HRD, Govt. of Bihar, Patna
2. Collector, Madhubani
3. Regional Deputy Director of Education, Darbhanga
4. District Education officer, Madhubani



5. Principal, DIET, NAGAR, Babubarhi, District Madhubani
6. Block Education officer, Babubarhi, District Madhubani
7. Sri Parshuram Mochi Son of not Known, Block Education officer, Babubarhi, District Madhubani
8. Director Primary Education, Dept. of HRD, Govt. of Bihar, Patna
9. Director, Bihar Education Project Council, Shiksha Bhawan, Rashtrabhasa Parisar, Saidpur, Rajendra Nagar, Patna
10. State Programme officer, Bihar Education Project Council, Shiksha Bhawan, Rashtrabhasa Parishad Parisar, Saidpur, Rajendra Nagar, Patna
11. Sri Mahesh Prasad, BRCC, Block Resource Centre Babubarhi, District - Madhubani

.... Respondents

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Appearance :

(In CWJC No.18090 of 2016)

For the Petitioner : Mr. Prabhakar Singh, Advocate

For the State : Mr. Kameshwar Kumar, G.P.17
Mr. S.K. Ranjan, AC to G.P. 17

For the Project Council : Mr. Grijesh Kumar, Advocate

(In CWJC No.15628 of 2016)

For the Petitioner : Mr. Prabhakar Singh, Advocate

For the State : Mr. Madhaw Prasad Yadav, G.P.23

Mr. Sanjay Kumar, AC to G.P.23

For Bihar Education Project : Mr. Grijesh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date: 22-12-2017

Heard learned counsel for the petitioner, State and Bihar
Education Project.

2. The petitioner is aggrieved by his removal from the
post of BRCC for Babubarhi Block in the district of Madhubani.

3. The petitioner is an Assistant Teacher and form
among the Assistant Teachers persons are selected for the post of
BRCC on the basis of willingness expressed by them by applying for



the post. There are eligibility criteria also specified for such selection and initially the petitioner having applied was placed at No.1 in the merit list out of 8 persons and was also posted as BRCC at Babubari. This was challenged by a person who was at serial no.7 in the merit list before this Court in CWJC No. 2557 of 2015 which came to be dismissed by order dated 22.04.2015. Thereafter, an inquiry was held by the authorities and even the petitioner has been disengaged on the ground that he did not satisfy the basic eligibility criteria of having three years experience from Government owned or fully controlled Primary/Middle School and also on the ground that petitioner was an Urdu Teacher and there is no post of Urdu Teacher for being selected as a BRCC.

4. Learned counsel for the petitioner submitted that he was the most qualified person in the entire district and thus was rightly selected and further, that the advertisement dated 03.07.2014 did not specify the condition that experience was limited to only Government owned or fully controlled Primary/Middle Schools. With regard to there being no post for Urdu Teacher, it was submitted that though he is a teacher of Urdu, but his engagement is on the post of Language Teacher, and, thus, the said restriction was not applicable in his case. It was contended that one of the compulsory subjects was also English and therefore the petitioner is suited for such selection as



his qualification is not limited to Urdu. Learned counsel submitted that there has been no proper enquiry so as to enable the petitioner to defend his selection.

5. Learned counsel for the State and Bihar Education Project submitted that the selection of the petitioner was erroneous for the reason that the advertisement itself starts with the line that the same was being issued in terms of letter no. 334 dated 12.06.2014 of the Director, Research and Training, Bihar, Patna and, thus, all the terms and conditions contained in such guidelines are inherently and mandatorily to be applied for the purposes of the said advertisement. Learned counsel submitted that the same clearly specifies and qualifies that with regard to experience, the same shall be from Government owned or fully controlled Primary/Middle Schools. It was submitted that in the present case, the admitted position is that the experience which the petitioner claims is from a Private Madarsa. Further, with regard to the question of the petitioner not being eligible as there was no vacancy for Urdu in the district of Madhubani, it was submitted that the petitioner was teaching Urdu in the school in question and, thus, for all practical purposes he shall be deemed to be an Urdu Teacher. It was submitted that due to oversight, an error has been committed by the authorities but having realized the same, such error has been rectified, which is permissible, as illegality cannot be



perpetuated and the authorities cannot be estopped from correcting/rectifying a mistake.

6. Having considered the matter, the Court does not find any merit in the writ petitions. The petitioner admittedly does not possess the requisite experience from any Government owned or fully managed Primary/Middle School. This qualification is an inherent eligibility criteria as per the advertisement itself and, thus, there cannot be ambiguity and relaxation of the same. Once the petitioner is found unfit on the ground of experience, he goes out of the sphere of consideration and accordingly, his removal cannot be said to be bad in law. Though the question of there being no post of Urdu, has become academic, but since the issue has been raised by both the sides, the court would clarify that if the petitioner was not appointed as an Urdu Teacher, he cannot be deemed to be one just because he is a teacher of Urdu. The criteria of there being no post of Urdu would apply to a person appointed as Urdu Teacher but if the petitioner was appointed as a General Language Teacher, just because he teaches Urdu would not unsuit him. Thus, such restriction would not apply to the petitioner in terms of the advertisement in question. However, once the court has held him unsuited on the ground of experience, just because he is eligible for the post with regard to another criteria would not make him eligible for consideration for the post of BRCC.



7. Accordingly, the writ petitions stand dismissed.

(Ahsanuddin Amanullah, J.)

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CAV DATE	
Uploading Date	23-12-2017
Transmission Date	

