

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.565 of 2015

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Savita Kumari wife of Dinesh Prasad Raut resident of village - Hanuman Nagar,
P.S. Mohiuddin Nagar, District - Samastipur

.... Petitioner

Versus

1. The State of Bihar through Secretary Education Department Bihar, Patna
2. The Director, State Project, Bihar Education Project Counsel, Patna
3. The District Education Officer, Samastipur
4. District Programme officer, Samastipur
5. The Block Development officer, Mohiuddinnagar, Samastipur
6. Block Education officer, Mohiuddinnagar, Samastipur
7. Block Education Extension Officer - Cum - Secretary, Selection for Prakhand Shikshak Mohiuddinnagar, Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Mahashweta Chatterjee, Adv.

For the Respondent/s : Mr. Prabhat Kumar, AC to GA11

For Bihar Education Project: Mr. Girijesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-01-2017

Heard Ms. Mahashweta Chatterjee, learned counsel
appearing for the petitioner, Mr. Prabhat Kumar, AC to GA-11, for
the State and Mr. Girijesh Kumar, learned counsel appearing for the
Bihar Education Project Council.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing Memo No.
8063 dated 3.12.2014 of the State Project Director whereby the prayer
of the petitioner for absorption against a vacant post of Full Time
Teacher in any of Kasturba Gandhi Balika Vidyalaya within the
district of Samastipur has been rejected.



The facts of the case leading to the impugned order stand discussed in the order of this Court recorded on 15.11.2016 and briefly stating, the petitioner was appointed against one of the four posts advertised vide Annexure 1 in the Kasturba Gandhi Balika Vidyalaya, Mohiuddin Nagar in the district of Samastipur as a Full Time Teacher. The appointment letter dated 7.11.2007 is enclosed at Annexure 3. The petitioner has obtained training and certificate of which is present at Annexure 4. The services of the petitioner was terminated vide order passed by the Block Education Extension Officer cum Block Resources Centre Co-ordinator, Mohiuddinnagar bearing Memo No. 391 dated 16.9.2008, a copy of which is enclosed at Annexure 6. The letter of termination makes reference to a letter issued by the District Superintendent of Education cum District Programme Co-ordinator, Samastipur dated 8.9.2008, whereby the strength of Full Time Teacher was reduced from four to three in each of the schools run under the Project. The petitioner was appointed against the fourth post and thus, was removed with stipulation that in case any post would fall vacant in future, the petitioner would be adjusted against one such post. The Bihar Education Project Council vide letter dated 27.11.2007 has also communicated its decision to reduce the strength of Full Time Teacher from four to three in each of Kasturba Gandhi Girls Schools. A clarification was issued by the



State Project Director vide letter No. 1590 dated 1.4.2009, whereby the District Superintendent of Education cum District Programme Co-ordinator, Sarva Shiksha Abhiyan was advised to accommodate such of the teachers who were found excess on the strength of the school, against the vacancies available in other schools within the district and there is no need to take recourse to fresh advertisement. It was also advised that such teachers can also be adjusted against vacancy caused where any Full Time Teachers has not given joining or has left the job. This position is reiterated in a subsequent letter of the State Project Director bearing No. 2315 dated 13.5.2009 present at Annexure 11.

Since the respondent authorities in the Bihar Education Project Council did not take steps to accommodate the petitioner who admittedly had succeeded in the selection process and was also trained, that she was forced to move this Court in C.W.J.C.No. 546/2009 and the writ petition was disposed of vide order passed on 11.9.2014 with a direction to the Director, Education Project Council, Patna to consider the grievance of the petitioner in the background of the advisory issued by him dated 13.5.2009 present at Annexure 11 and the letter dated 4.5.2009 which was enclosed in the interlocutory application. The matter was reconsidered by the State Project Director and by the order impugned dated 3.12.2014, the claim of the



petitioner has been rejected.

The short argument advanced by Ms. Chatterjee to question the impugned order is that the opinion of the State Project Director at paragraphs no. 6 and 9 is contrary to the factual position as confirmed from the statement present at paragraphs no. 18 and 19 of the writ petition where the petitioner has specifically stated that there was vacancy existing in the year 2009 and against which post the petitioner could have been accommodated as per the own decision of the State Project Director. She submits that the statement made in paragraphs no. 18 and 19 of the writ petition has not been denied by the respondents, rather has been admitted and thus, the opinion of the State Project Director that there was no post of Full Time Teacher available is incorrect and contrary to the records.

The argument has been contested by Mr. Girijesh Kumar, learned counsel appearing for the Council, and who submits that much water has flown since the termination took place. While understandably not choosing to contest the specific averment of the petitioner regarding vacancy existing on the post of Full Time Teacher, learned counsel has taken this Court through the guidelines issued, present at running Page-142 to submit that with effect from 1.10.2014, the eligibility qualification was enhanced and it is only such of the teachers who possessed graduate qualification, were



allowed to continue while such of the teachers, who failed to obtain such qualification even in the extended period, were removed from their post. According to Mr. Girijesh Kumar, the petitioner was not a Graduate. He, thus, submits that since the petitioner admittedly did not possess the graduate qualification, she could not have been accommodated against the post.

According to Mr. Girijesh Kumar, all such teachers, who would fail to obtain graduation qualification until December, 2015 were terminated under deemed termination w.e.f. 1.10.2014 as per the amended guidelines.

Learned counsel has next referred to a letter of the State Project Council present at Annexure 'J' to submit that the schools are run under the Scheme of the Government of India in its Ministry of Human Resources and even the funds are provided by the Central Government. It is submitted that a decision is taken for engagement of the teachers on part time basis and though a request was made by the State Project Director to allow the teachers on full time basis vide letter dated 12.10.2015 present at Annexure 'K' but the request has not been accepted and a decision has been taken to continue with the system of part time teachers which continues even today. Learned counsel, however, admits that there are several vacancies available and the petitioner would be at liberty to apply against one of such



post.

Ms. Mahashweta Chatterjee, learned counsel for the petitioner, on instruction has stated at the Bar that although the petitioner has cleared her final graduation examination but there are certain papers of Part II which requires to be cleared and though the petitioner has appeared in the papers but the result is awaiting. Meaning thereby, the petitioner is not qualified for appointment as of today.

I have heard learned counsel for the parties and perused the records. Even if the decision to terminate the service of the petitioner on grounds that her appointment was on a post which was in excess of the sanctioned strength, suffered no infirmity and was a consequence of a policy decision but the treatment meted to her thereafter reflects definite arbitrariness and the decision of the State Project Director to reject her claim on grounds of absence of vacancy is incorrect. In fact it is rather surprising that even when it is the decision of the State Project Director himself present in the letter dated 1.4.2009 bearing No. 1590 enclosed at Annexure 8 which is reiterated in his subsequent letter no. 2315 dated 13.5.2009 which in particular advises the District Superintendent of Education cum District Programme Co-ordinator to accommodate the Full Time Teachers, who were removed on grounds of being appointed in excess of the strength, against any vacancies



available but the order impugned runs counter to this advise. The State Project Director is not correct in his view regarding non-availability of vacancy at the relevant time in the year 2009. The specific statement of the petitioner at paragraphs 18 and 19 is practically admitted by the respondents in their counter affidavit which on its own is enough to quash the impugned order which is accordingly quashed and set aside.

The issue is what next, since in view of the circumstances discussed, the only consequential direction now required is to direct the Project Director to appoint the petitioner against one such vacant post because he has not taken steps to ensure compliance of his own advisory present at Annexure 8 and Annexure 11. Even the District Superintendent of Education cum Project Co-ordinator has failed the petitioner by not taking steps to accommodate her against the vacancies which were available in 2009. However, despite such position, no such positive directions can be issued because the passage of time has become an obstruction for the petitioner. In the meantime the eligibility qualification has been enhanced and under the guidelines only graduates are eligible for such appointment and the petitioner has yet not acquired such qualification.

Having heard the learned counsel for the parties and considering the stage at which contest presently stands, obviously in



view of the changed qualifications, no positive directions can be issued because undisputedly the petitioner does not hold a graduate qualification.

In the circumstances discussed, I deem it fit and proper to allow this writ petition with a liberty to the petitioner to apply against any vacant post of part time teacher under the Scheme and her candidature shall be considered by the Project Director or the authority concerned bearing in mind that the petitioner has already succeeded in a selection process and has been illegally denied accommodation against a vacancy despite the advisories issued being in her favour.

It goes without saying that since the petitioner had already succeeded in the selection process, due weightage on the experience gained including age relaxation, if need be, should be given to the petitioner.

With the aforementioned observation and direction, this writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2017
Transmission Date	NA

