

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22978 of 2012

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Narayan Prasad Mandal, S/O-Late Jaishri Mandal, R/O Village -
Khajurbari, P.O. - Gamharia, P.S. - Terhagachh, District - Kishanganj, at
present posted and functioning as Peon Project Girls High School,
Ghanifulpras, Kishanganj, District – Kishanganj.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Human Resources
Department, Bihar, Patna.
2. Director, Secondary Education, Bihar, Patna.
3. Deputy Director of Secondary Education, Bihar, Patna.
4. Deputy Regional Education Director, Purnia Division, Purnia.
5. District Education Officer, Kishanganj.
6. Head Master, Project Girls High School, Ghanifulsara, District-
Kishanganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Chaudhary and Mr.
Akshansh Ankit, Advocates.

For the Respondents : Mr. Shashi Shekhar Pd. Sinha, A.C. to G.A. 6.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
C.A.V. ORDER

3 30-06-2017

The petitioner is aggrieved by the orders contained in
Memo No. 635(P) dated 22.07.2008(Annexure-3) and Memo No.
276 (P) dated 26.05.2010(Annexure-5), passed by the Director,
Secondary Education, Bihar, Patna, (Respondent No. 02) by which
the services of the petitioner has not been recognized on the
ground that at the time of initial appointment, he was below the
prescribed minimum age limit of 18 years. The petitioner has
further sought for grant of consequential relief.

The petitioner having qualification of 'Madhyama',



made his application for temporary appointment on the post of Peon, and came to be appointed 30.12.1980 by the Managing committee of the concerned School and thereafter, vide Letter No. 0/5 dated 05.01.1983 of the Managing Committee of the concerned School, his appointment was made permanent against the sanctioned post and following the all procedural formalities.

At the time of taking over of the School by the State Government, the Secretary of the Managing Committee of the School sent a project report, as also the check list, counter signed by the D.E.O., Purnea, in which the name of the petitioner was figured at serial No. 02 of non teaching staff.

It appears that the dispute arose after submission of the inspection report by the Three Man Committee constituted in pursuance to the order dated 03.01.2006 in Civil Appeal No. 6676-6681/2001, passed by the Supreme Court of India, thereafter the service of the petitioner has been disapproved and cancelled vide Memo No. 335 (P) dated 22.07.2008 by the Respondent No. 02, on the ground that at the time of initial appointment, the petitioner was below the age of 18 years and thereafter vide Memo No. 276 (P) dated 26.05.2010 the Respondent No. 02 rejected the representation of the petitioner made for recognition / approval of his services without considering the fact that the petitioner has



already attended the age more than 18 years on 05.01.1983, when his appointment was made, permanent against the sanctioned post vide Annexure-1.

It has been contended that the orders impugned have been passed without affording opportunity of hearing to the petitioner and without considering the fact that the services of the petitioner on the post of Peon was made permanent w.e.f. 05.01.1983 in the concerned Project School and his date of birth is 24.06.1964 and he had rendered his services more than 25 years on the said post before the orders under challenge.

No counter affidavit has been filed on behalf of the State.

At this juncture, I would like to notice a Full Bench decision of this Court rendered in the Case of Project Uchcha Vidyalay Sikshak Sangh Vs. State of Bihar and others and analogous cases reported in 2000 (1) P.L.J.R 287, which read thus :

“ 21. In my view, having regard to the facts of these cases, there appears some substance in the submission. The respondents have also accepted that process for selection of such schools were complete in the year 1986 on the recommendation of the three-man committee. It is also not disputed that



petitioners are working uninterruptedly for the last 16-17 years. The apex Court in the case of **Delhi Recruit Class II Engineering Officers' Association V. The State of Maharastra** (AIR 1990 SC 1607) held that where the initial appointment was not made in the strict terms of the rule, but the temporary appointee continued uninterruptedly for a long period till regularization of the service, the period rendered by him should be taken into consideration for the purpose of consequential benefits. Therefore, in my view, since such petitioners have continued uninterruptedly for a period of 16-17 years, they should not be removed from the job on a simple ground that they had crossed the age of 31 years at the time of initial appointment by the Managing Committee. Similar was the view taken by a Full Bench of this Court in the Case of **The Executive Engineer C.P.W.D and Others V. M/S R.L. Singh, Civil Engineer** [1997 (1) PLJR 509] in which in the facts of that case, while approving the proposition that it is always open to the State Government to consider the validity of appointment already made for



the purpose of grant or refusal of *post facto* approval. Thus having regard to the fact that appellants had continued uninterruptedly in service for more than 17 years, the State Government was directed to regularize their services against the post within the staffing pattern as applicable to those colleges.

22. That apart, this cannot be denied that at the time of initial appointment of these petitioners, there was no statutory rule or circular to prescribe the upper qualifying age of appointment of a teacher in a privately managed school. It would also appear that the State Government while taking over the management and control of other privately managed schools under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, had granted age relaxation to the teachers and non-teaching staff of these schools up to the age of 35 years. Therefore, although the relevant circular of the State Government, whereby the maximum age was relaxed to 35 years for the teaching and Non-teaching staff of the Non-Government Secondary Schools, is not applicable to the teaching



and non – teaching employees of the Project Schools as already held above but having regard to the facts that they have continued uninterruptedly for several years, it would be in fact too hard to reject their claim at such a belated stage simply because some of them had crossed the age of 31 years at the time of initial appointment by the Managing Committee before the take over of the Schools as Project School. I am, therefore, of the view that in the background of the facts stated above, such petitioners are also entitled for the regularization/recognition of their services against the post within the aforementioned staffing pattern.”

23. Now coming to the cases of such petitioners who have been refused regularization of service on the ground of being underage, it has to be noticed that as per circular no. 142, dated 4th February, 1989, there is a prescription about the upper age limit. But no lower limit of age has been prescribed either in the instant circular or the previous circular no. 705 dated 12th October, 1982 nor anything is stated in the counter affidavits filed on behalf of the



respondents. The learned counsel for the State also could not point out any statutory provision in which the minimum age limit has been fixed for the appointment of a teacher in a privately managed or even Government schools. It would appear from the ratio laid down in the case of **Mokhtar Ahmad V. Bihar State Road Transport Corporation & Ors.** [1995 (1) PLJR 183] that it was held that the minimum qualifying age for appointment was 18 years. Therefore, in absence of any other contrary provision, I fully agree with the views expressed by this Court in the abovementioned case.”

Thus it appears that the Full Bench while rendering the Judgment referred above, has gone into to deal with the identical issue of under age and has opined that since there was no rule in existence, when such engagements were made by the Managing Committee of the concerned Schools therefore, after so many years of appointment, the claim of the petitioner about recognizance of his service can't be rejected. The Full Bench decision had travelled up to the Supreme Court of India but the Apex Court did not express any contrary opinion on the



observations of the Full Court.

In view of the forgoing discussions and specially the observations made by the Full Court as referred above, the impugned orders contained in Annexure – 3 dated 22.07.2008 and Annexure-5 dated 26.05.2010 are quashed.

The Respondent No. 02 is directed to ensure that necessary order in favour of the petitioner is passed within a period of three months from the date of production of a copy of this order.

Therefore, this writ application is, accordingly, allowed.

(Sudhir Singh, J)

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