

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18406 of 2011

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Dilip Kumar Sah, S/O Babulal Sah, resident of Village - Krishna Dih, P.S. Banka, District – Banka.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-Cum-Secretary, Human Resources Department, Bihar, Patna.
2. The Director Secondary Education Bihar, Patna.
3. The Deputy Director Madhyamik Shiksha Karyalaya, Budh Marg, Patna.
4. The Regional Deputy Director of Education, Bhagalpur.
5. District Education Officer Banka.
6. The Head Master Mar Shahid Satish Project Girls High School, Kharhara.
7. The Treasury Officer, Banka.

.... Respondents

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Appearance :

For the Petitioner : Mr. Mithileshwar Prasad Shukla, Advocate.

For the State : Mr. Utsav Kumar, A.C. to G.A. 4.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

9 30-06-2017 This writ application has been filed as to quash the order contained in Memo No. 242 (P) dated 11.05.2010 (Annexure-4) issued by the Director, Secondary Education, Bihar, and further for direction upon the respondents as to recognize the service of the petitioner on the post of Assistant Teacher.

The petitioner came to be appointed on 21.05.1988 as an Assistant Teacher Mathematics/Physics against the sanctioned post by the Managing Committee of Amar Sahed Satish Project Girl School, Kharhara, Barahat, Banka, and he made his joining



on his same day and had been serving the very post.

On 21.07.2008, the Director, Secondary Education, Bihar, Patna, vide Memo No. 570 (P) rejected the recognition of the services of the petitioner, on the ground of being untrained. The petitioner made representation against the said order dated 21.07.2008, which came to be rejected vide Memo No. 242 (P) dated 11.05.2010 issued from the office of the Director, Secondary Education, Bihar, Patna, which is challenged hereunder.

A counter affidavit has been filed on behalf of the State. It is contended that in view of the direction of the Hon'ble Supreme Court, a Three Man Committee was constituted vide Memo No. 41 (P) dated 09.03.2006 for the purpose of examining the selection of the schools and also for the purpose of examining the personal grievances of the teaching and non-teaching staff of the Project School 1984-85 phase. The necessary guidelines were issued vide Government Order No. 142 dated 04.02.1989 for the purpose of approval of service of teaching and non-teaching staff appointed by the Managing Committee. That in the said Government Order, the minimum requisite qualification for the purpose of approval of services of Assistant Teacher was prescribed as Graduation with Teachers Training, however, relaxation in training was extended to the female teachers and



member of the Scheduled Caste and Scheduled Tribes.

The Three Man Committee examined the case of the petitioner and found that the petitioner being untrained, thus did not make recommendation for the approval of service of the petitioner, accordingly, the claim of the petitioner was rejected vide Memo No. 570 dated 21.07.2008. Thereafter, the representation of the petitioner was rejected vide Memo No. 242(P) dated 11.05.2010 as the petitioner did not possess the requisite qualification of training.

A Full Bench of this Court had occasion to consider the identical issue besides other issues, in the case of Project Uchcha Vidyalay Sikshak Sangh Vs. State of Bihar and others and analogues cases reported in 2000 (1) P.L.J.R 287, which read thus :

“ 24. In some of the cases before us, the petitioners have been refused recognition/regularization of their services on the ground that they did not possess the requisite training qualification of B.ED. (Bachelor in Education) though they had the certificates of B.T (Basic Trained). Learned Counsel for the petitioners contended that circular no. 142, dated 4th February, 1989, only stipulates trained



graduate as the minimum qualification. It does not specify any certificate that the State Government has also recognized B.T equivalent to B. Ed. for appointment of teachers in Non-Government High School or nationalized schools. Therefore, candidates having B.T. certificates should also be treated as “trained graduates”. In this regard, our attention was drawn to a letter of the Secretary, Human Resources Development Department, dated 18th April, 1996, contained in Annexure – 16 and yet another letter of the same authority, dated 27th June, 1977, as contained in Annexure-16/A to the supplementary affidavit dated 25th January, 1999, filed in C.W.J.C No. 1224, to show that B.T Certificates are treated equivalent to B.Ed. and Dip-in-Ed for the purpose of appointment of teachers in Non-Government High Schools or nationalized schools. It was thus contended that respondents are not justified in denying recognition/regularization of the services of such teachers on the ground that they had not passed the B.Ed. Examination.

25. From the aforesaid letters of the



Secretary, Human Resources Development Department, it would appear that for the purpose of appointment in a Non-Government High School, B.T. certificates are treated at par with B.Ed. qualification. But in absence of any such circular with respect to the present appointment or admission in the counter affidavit on behalf of the State, I do not feel inclined to hold that certificates of B.T. are at par with B.Ed. qualification. Any person having passed matriculation examination may appear at the B.T. examination conducted by the Secondary School Examination Board and can get a certificate in this regard whereas a person is not entitled to get a degree of B.Ed. unless he or she had passed the Graduation examination. It has been noticed that the expression “trained graduate” is very well understood for a candidate having Bachelor’s degree in the subject of education in addition to Bachelor’s degree in Arts or Science or Commerce etc. That apart, a certificate of B.T. as noticed above, is granted by the Secondary School Examination Board, whereas the degree of B.Ed. is granted



by University. But, however, I may clarify that in spite of the aforesaid views of mine, it will be open to the authorities of the State Government to consider whether a “B.T. certificate” can be equated to that of “B.Ed. qualification” or “qualification of Dip-in-Ed.”

29. Now coming to a group of cases in which some of the teachers have been refused regularization of their services since they did not possess minimum required qualification at the time of appointments by the Managing Committee of their respective schools. It would appear from circular no. 705, dated 12th October, 1982, or the second circular no. 142, dated 4th February, 1989, the minimum qualification for appointment of a teacher in such schools is “trained graduate” and one of the subjects at the graduation level is necessarily to be such as has been included within the sanctioned strength of teachers. With respect to the candidates belonging to Scheduled Castes and Scheduled Tribes, it was of course stipulated that in case candidates of these categories do not possess the



training certificate, they will have to be trained at their cost within three years from the date of their appointments. From the aforesaid, it would thus appear that a teacher of general category must be a trained graduate for the purpose of recognition/regularization of the service. According to the counsel for the State, however, such a teacher must be trained graduate on the day on which he/she was appointed by the Managing Committee, whereas according to the counsel for the petitioners, the candidate must possess the qualification of “trained graduate” on the day the case is being examined for recognition/regularization in the Project Schools by the Screening Committee.

30. In my view, having regard to the facts noticed above, in absence of any policy of the Government fixing the cut-off date for the purpose of possessing such minimum qualification, it would not be proper for the respondents to refuse recognition/regularization of the services of the teachers on the ground that at the time of their appointments by the Managing Committees of the respective schools, they were not trained graduates. Because such a requirement



was prescribed for the first time by circular no. 142, dated 4th February, 1989, which, as I have already held above, cannot be applied retrospectively. It would also be relevant to mention that similar was the view expressed by this Court on the previous occasion while disposing of these cases.”

In view of the foregoing discussions, I am of the view that since the petitioner is not a trained teacher, therefore, the decision contained in Memo No. 242(P) dated 11.05.2010, taken by the Director, Secondary Education, Bihar, Patna, in respect of the petitioner, does not require any interference.

Therefore, the writ application is dismissed.

(Sudhir Singh, J)

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