

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1386 of 2013

IN

Civil Writ Jurisdiction Case No. 5403 of 2012

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Raghawendra Jha S/O Late Dhanushdhari Jha Resident Of Village & P.O-
Pariharpur, P.S- Rajnagar, District- Madhubani.

.... Appellant

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna.
3. The Director (Secondary Education-, Bihar Secondary Education Office,Buddha
Marg , Patna.
4. The Headmaster, Laxmi Narayan Gupta Ramsakhi Project Girls High School,
Rajnagar, District- Madhubani.
5. Smt. Kanti Devi W/O Sri Satya Narayan Rai Resident Of Village & P.O-
Maheshwara, Police Station & Anchal- Babu Barahi, District- Madhubani,
Presently Posted As Assistant Teacher In Laxmi Narayan Gupta Ramsakhi Project
Girls High School, Rajnagar, District- Madhubani.

.... Respondents

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Appearance :

For the Appellant : Mr. P.K.Sahi, Senior Advocate
Mr. Sheo Nandan Mishra, Advocate
For the Respondent State: Mr. Dhurjati Kr Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-02-2017

Order impugned is dated 24.07.2013. By virtue of this
order passed in C.W.J.C. No. 5403 of 2012, the learned single Judge
dismissed the writ application of the appellant and refused to quash
the office order dated 01.02.2012, issued under the signature of the
Director, Secondary Education, by which service of respondent
No.5, namely, Smt. Kanti Devi, having been shown as Assistant
Teacher (Sanaskrit) was not interfered with.



The submission of learned Senior Counsel representing the appellant is that the learned single Judge committed an error of law and fact by refusing to interfere with adjustment of respondent No.5 as Sanskrit Teacher when all along she herself claimed that she was appointed as a Hindi Teacher, but subsequently she came to be adjusted as a Sanskrit Teacher, which is not permissible.

When an objection is raised with regard to the fact that the appellant did not even have minimum qualification to be appointed as Assistant Teacher in Sanskrit but still the appointment was made by the managing committee, which cannot bind the State, a submission is made that it is not the initial engagement or appointment of the appellant but his eligibility on the date the three-member committee decided to recommend taking over of the services of the teachers in the school in question, which is of relevance.

The learned single Judge has dealt with the issue and has found the following facts for refusing to interfere or accord the prayer of the appellant in following terms: -

“This Court in fact is not even required to look into such claim of the managing committee which was doing all sort of acts to adjust a large number of persons even when they did not possess the requisite qualification for the post of teacher. The



managing committee infact when it had appointed Respondent no. 5 on 3.1.1983 on the post of Hindi Teacher she was actually possessing the qualification of Shastri meant for Sanskrit Teacher. Therefore when Respondent no. 5 did not possess the qualification for the post of Hindi Teacher she could not have been absorbed on the post of Hindi Teacher. As a matter of fact when the Managing Committee had appointed the petitioner on 2.1.1985 on the post of Sanskrit Teacher he too did not possess the prescribed qualification for the post of Sanskrit Teacher.

Thus when as per the order of the Apex Court, the three man Committee had examined the issue and had found that the petitioner and respondent no. 5 both were possessing the qualification of Sanskrit teacher and respondent no. 5 was senior in length of service on account of her date of joining i.e., 03.01.1983 as against the petitioner whose date of joining was 02.01.1985 no error can be said to have been committed in absorbing respondent no. 5 against the post of Sanskrit teacher. The submission of learned counsel for respondent no. 5 that on 02.01.1985 when the petitioner got appointed as a Sanskrit teacher of the School, he did not possess the prescribed qualification of Shastri is also worth acceptance and to that extent reliance placed by learned counsel for the petitioner on the certificate of passing of Shastri



examination dated 24.07.2000 showing the petitioner to have passed the 1985 Shastri examination also gets automatically explained from the marksheet of the same examination which was actually issued on 09.05.1986.

Thus, it becomes clear that 1985 examination of Shastri in which the petitioner had appeared was held sometime in the year 1985-86 and its result, results were published in the year 1986. This Court would also find the same in the admission of the petitioner in paragraph no. 5 of the writ application wherein, he himself has accepted to have passed the Shastri examination only in 1986. Paragraph no. 5 of the writ application reads as follows:-

"That the petitioner passed Madhyama Examination 1980 in 3rd Division securing 43% marks from Kameshwar Singh Darbhanga University, Darbhanga. Subsequently he passed intermediate (Up Shastri) Examination 1982 in 3rd Division securing 42% marks from the aforesaid University. From the same very University the petitioner, thereafter passed Shastri Examination 1986 in 2nd Division securing 46.25% marks. The petitioner also passed Acharya (M.A.-Sanskrit) examination 2005 from Rashtriya Sanskrit Sansthan, New Delhi. It is pertinent to state here that the



qualification of Acharya (equivalent to M.A.) was acquired by the petitioner after his appointment as Assistant Teacher in Sanskrit in Laxmi Narayna Gupta Ramsakhi Project Girls High School, Rajnagar, District Madhubani."

(underlining for emphasis)

That by itself would go to show that on 02.01.1985, the petitioner did not possess the qualification of Sanskrit teacher as on the date i.e. 02.01.1985. The Apex Court had already clarified in its judgment that only such teachers could be absorbed in service in taken over Project Schools who at the time of their initial appointment were possessing the requisite qualification. The petitioner however was not possessing the requisite qualification as on the date of his appointment, inasmuch as, no Sanskrit teacher could have been appointed in a High School without the requisite qualification of Shastri. Thus, the rejection of the case of the petitioner for his being absorbed in the project school does not suffer from any error.

That being so, this Court does find any error in the decision contained in the impugned order refusing to absorb by way of takeover of the services of the petitioner in the project school in question."

In view of the above finding of facts as well as the law having been taken notice of by the learned single Judge, the case of



the appellant does not become any better merely because a legal intervention is sought to be made by the learned senior Counsel based on the decision rendered by a Full Bench in the case of ***Project Uchcha Vidyalaya Shikshak Sangh Vs. the State of Bihar (F.B.)***, reported in 2000(1) PLJR 286, especially paragraph 30, 31 and 33. The Court opines that the relevance of those paragraphs is with regard to validly appointed teachers with requisite qualification, and thereafter obtaining training. It cannot be a case that a person can be appointed without the minimum eligibility or qualification at the threshold and he acquires the qualification subsequently which can make him eligible for consideration on take over.

The judgment and decision of the learned single Judge does not suffer from any vice. The appeal, therefore, is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
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