

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18297 of 2016

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Moni Kumari, Daughter of Yogendra Choudhary, Resident of Village & Post-Pokhar Bhinda, P.S. Sakatpur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department Government of Bihar, Patna.
2. The District Education Officer, Supaul.
3. The District Programme Officer (Establishment), Supaul.
4. The Block Development Officer, Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suryakant Kumar, Advocate
For the State : Mr. Jai Prabhat Kishore, A.C. to S.C. 13

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-03-2017

Heard learned counsel petitioner and the State.

The petitioner has moved the Court for quashing of the order contained in Letter No. 1266 (Ni.) dated 20.08.2016 issued by the respondent no. 3, by which service of the petitioner as Panchayat Teacher has been cancelled and order has been made for recovery of the fixed salary/honorarium under the Public Demands Recovery Act, 1914.

The petitioner had applied for being appointed as Panchayat Teacher in Gram Panchayat Raj Amaha in the year 2006 and after counselling, she was appointed on 30.11.2006 but later on it transpired that the petitioner's date of birth was 05.07.1988. Since the selection process had been initiated and selection was started and



completed in the year 2006, as per the provisions of Rule 8 (Kha) of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006, (hereinafter referred to as the 'Rules') a person has to attain the age of 18 years on 1st of January of the year of recruitment. In the present case, since on 01.01.2006, the petitioner was only 17 ½ years old, his employment has been held to be illegal and accordingly her employment was terminated.

Learned counsel for the petitioner submitted that the facts are not in dispute, but the issue has been decided by the co-ordinate Bench of this Court in the case of **Bahjat Fatma Vs. The State of Bihar & Ors. (C.W.J.C. No. 18315 of 2008)** by order dated 10.11.2009, where it has been held that even if on the date of appointment, the petitioner was less than 18 years but in terms of the aforesaid Rule 8 (Kha) of the Rules, the person having attained the age of 18 years, such appointment could not be terminated. Learned counsel has also relied upon the decision of co-ordinate Benches of this Court in the case of **Anita Prakash Vs. The State of Bihar & Ors. (C.W.J.C. No. 7707 of 2010)** dated 27.01.2011 as well as in the case of **Smt. Rani Kumari Vs. The State of Bihar & Ors. (C.W.J.C. No. 15617 of 2010)** dated 29.04.2014, for the same proposition.

Learned counsel for the State submitted that the



writ petition is fit to be dismissed as the petitioner admittedly was under 18 years at the time of having applied for the post and also had not completed 18 years as on 01.01.2006 in terms of the stipulation of Rule 8 (Kha) of the Rules.

Having considered the rival contention, this Court does not find any merit in the present writ application.

The petitioner admittedly had not completed 18 years of age on 01.01.2006 and the employment being made on 30.11.2006, he was required to have completed the age of 18 years as on 01.01.2006. This being a statutory provision, there cannot be any relaxation of the same. Unless the said provision is struck down or repealed, the decision of the co-ordinate Bench in the case of **Bahjat Fatma** (supra) in fact goes against the petitioner as in the said case the recruitment process was started in the year 2006 but the appointment was made on 19.01.2007 and in terms of Rule 8 (Kha) of Rules, she had attained the age of 18 years as on 01.01.2007. Moreover, in the case of **Anita Prakash** (supra) the said relates to the appointment of Shiksha Mitra, which was not governed by any statutory rules, which is not the case at present where the appointment of the Panchayat Teacher is as per the Rules, which are statutory. Further in the case of **Smt. Rani Kumari** (supra), relates to appointment by the Managing Committee of a private school and,



thus, it has been held that at the relevant time, there was no statutory or mandatory requirement that a person should have completed the age of 18 years for such employment. Under such circumstances, the co-ordinate Benches have passed the aforesaid orders. Thus, in the considered opinion of the Court, the said orders of the Court in the aforesaid cases are of no help to the petitioner and at the cost of repetition, the order in the case of **Bahjat Fatma** (supra) goes against the petitioner.

Having held so, though in the considered opinion of the Court, the petitioner has no case for interference in the order impugned as far as it relates to terminating her services, but in view of the fact that she having worked on the post for which she has been paid fixed salary/honorarium, the same is not liable to be recovered.

In view thereof, the writ petition stands disposed off without interfering in the order of termination of the petitioner from the post of Panchayat Teacher but setting aside the order directing for recovery of fixed salary/honorarium already paid to her.

(Ahsanuddin Amanullah, J.)

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