

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2182 of 2017

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1. Sister Sinny A. R. Daughter of Mr. Mary Rafel Resident of Sukhia Bandhavit,
P.S.-Bounsi, District Banka.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department, of Education,
Government of Bihar, Patna
2. The Additional Commissioner cum Secretary, Department of Education,
Government of Bihar, Patna.
3. The Director, Secondary Education, Department, of Education, Government of
Bihar, Patna
4. The Deputy Director, Secondary Education, Department of Education,
Government of Bihar,
5. The District Education Officer, Banka, District-Banka.
6. The Secretary, Nirmala Girls High School, Harimohra, Sukhiya, Berhait, P.O. &
Dist.-Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal

For the Respondent/s : Mr. SMT.SHILPA SINGH-GA12

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 21-03-2018

Heard learned counsel for the petitioner, counsel appearing on
behalf of the State.

The only issue involved in this writ application is whether the
petitioner was over age for the purpose of appointment in the minority
school or not. If the law applicable to the petitioner permits appointment
at the age of forty plus then the action of the respondent in refusing
approval of the services of the petitioner is totally illegally, arbitrary and
without jurisdiction.

Mr. Alok Kumar Agrawal, learned counsel appearing for the
petitioner submits that this issue is no more res integra. In fact a
coordinate Bench in C.W.J.C. No.8164 of 2013 has already adjudicated
the issue referring to Clause 5 of the Bihar Non-Government Secondary



School (Taking Over of Management and Control) Act, 1981 the decision of the Co-ordinate Bench is authoritative pronouncement on the point is in favour of the petitioner. The Writ Court in C.W.J.C. No.8164 of 2013 has held that the action of the respondent refusing approval on the ground of over age illegal and arbitrary as the upper age limit for selection of teacher is not applicable in minority school. Only rider is that no teacher can be appointed after the date of superannuation, i.e., only after attaining the age of superannuation, a teacher cannot appointed in minority school.

In view of the judgment of this Court in C.W.J.C. No.8164 of 2013, the Court does not find any substance in the submission of the respondent in justifying the rejection of the approval of the petitioner vide order as contained in Annexure-8. The Court accordingly, under the aforesaid circumstance quashed the Memo No.10/A 1-02/2013/832 (Annexure-8). The respondents are hereby directed to consider the case in the light of the statutory provision under the Act as explained in C.W.J.C. No.8164 of 2013 and consider the case of the petitioner afresh in accordance with law indicated hereinabove within a maximum period of sixty days from the date of receipt / production of a copy of this order.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

