

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3241 of 2016

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Suprita Kumari, D/o Sri Lal Narayan Singh, Resident of Village- Majghaulia, P.O- Majghaulia, Block- Bathnaha, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar represented through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Department of Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Teacher Appointment Appellate Authority, Sitamarhi.
5. The District Education Officer, Sitamarhi.
6. The District Programme Officer (Establishment) Sitamarhi.
7. The Block Development Officer, Bathnaha, Sitamarhi.
8. The Block Education Extension Officer, Bathnaha, Sitamarhi.
9. The Mukhiya, Gram Panchayat Raj Majghaulia, Block Bathnaha, District Sitamarhi.
10. The Panchayat Secretary, Gram Panchayat Raj Majghaulia, Block Bathnaha, District Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate

For the Respondent/s : Mr. Kinkar Kumar, SC-9
Mr. Yogesh Kumar, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 19-03-2018

Heard learned counsel for the petitioner and State.

2. Mr. Ajay Kumar Thakur, learned counsel for the petitioner with reference to Annexures- 10 and 11 submits that the petitioner's selection process commenced under 2008 Rules and is entitled to be considered in terms of 2008 Rules and once the Teachers Employment Appellate Authority has considered the case of other similarly circumstanced and issued direction for their appointment notwithstanding commencement of the new Rule similar



benefit should be extended to the petitioner also.

3. The Rule with regard to appointment of Panchayat Teacher provides for filling of the unfilled vacancy in the next selection process, therefore, for any reason if the appointment was not made under the selection process undertaken by the respondents in 2008, the same has to be taken for the purpose of next recruitment year. In the meanwhile, the rule has undergone a change and the eligibility criteria have also changed. Earlier there was no requirement of passing TET, now after amendment in the Rule TET is one of the conditions of eligibility for any applicant. Now a candidate has to acquire training as well as passing TET for consideration for appointment against the post of Panchayat Teacher.

4. In view of the subsequent change, the respondents are required to undertake fresh selection process in accordance with 2012 Rules. So far as submission of Mr. Thakur that the Teacher Employment Appellate Authority has adopted two yardstick one for the other category of teachers and other for this category of teacher on the ground that earlier in the case of other they have filed appeal before commencement of the new Rule.

5. It is now well settled that the Court cannot issue direction, which has the effect of perpetuating legality, reference in this connection be made in the case of **State Of U.P. & Ors vs**



Rajkumar Sharma & Ors, reported in **(2006) 3 SCC 330** where this aspect of the matter was examined by the Apex Court, therefore, the Court is of the considered view that on the ground of parity the petitioner cannot be granted same relief, in view of commencement of 2012 Rules when the new eligibility criteria has been fixed by the respondents, therefore, the petitioner is required to participate in fresh selection process and the respondents are required to undertake fresh selection process in order to provide equal opportunity to participate in the selection process to all eligible candidate, which is the essence of Article 16 of the Constitution.

6. In view of the above, the Court does not find any merit in the contention of the learned counsel for the petitioner.

7. Accordingly, the writ application is dismissed with observation that in case the petitioner is otherwise eligible in terms of 2012 Rules, his case may not be rendered eligible on age factor and while considering the case of the petitioner, the respondents are required to relax the age of the petitioner as one time measure in the selection process, if undertaken pursuant to new Rule of 2012.

8. The submission of Mr. Thakur that the selection process, which was initiated in terms of 2008 Rules has to be considered for the purpose of considering the case of the petitioner, as the vacancy is of the year 2008. The law in this regard is well settled



by the Apex Court in the case of **State of M. P. Vs. Raghuveer Singh Yadav**, reported in **(1994) 6 SCC 151** where the Apex Court observed that after amendment in the Rule the respondents are required to undertake fresh selection process and in view of the above the respondents cannot apply the new Rules without inviting fresh application for consideration of the eligible candidates.

9. In view of the above, this Court does not find any merit in the submission of the learned counsel for the petitioner that the vacancy is of 2008 has to be filled up according to 2008 Rules.

10. The respondents are required to take immediate step for filling up of the vacancy to cater the need of the students and also in view of the Teacher students ratio prescribed under right to compulsory education within a period of six months.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	

