

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3366 of 2016

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1. Swapna Biswas, D/o Kshitish Chandara, Resident of Mohalla- Larkaniya Tola, Near Tribeni School, P.O.+ P.S.- Katihar, District- Katihar.
 2. Aparajita Chowdhary, D/o Rakhal Choudhary, Resident of Bharat Bakery, Main Road Thakurganj, P.O. + P.S.- Thakurganj, District- Katihar.
 3. Shipra Paul Roy, W/o Suman Datta, D/o Niranjan Pal Roy, Resident of Kamal Bastralaya, New Market Road, Opposite Head Post Office, P.S.- Katihar, District- Katihar.
 4. Niranjan Ghosh, S/o Nitai Chandra Ghosh, Resident of Dumaria, Ward No. 30, P.S.+ District- Kishanganj.
 5. Pushpita Das, D/o Kanhai Lal Das, Resident of Subhaspally, P.S.+ District- Kishanganj.
 6. Nandita Das, D/o Bimal Kumar Das, Resident of Milanpally, P.S.+ District- Kishanganj.
 7. Sudipta Das, S/o Sri Sudhir Kumar Das, Resident of Line Para, Near N.H. School, P.S.+ District- Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Vikash Bhawan, Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Vikash Bhawan, Patna.
4. The District Education Officer, District- Katihar.
5. The District Education Officer, District- Kishanganj.
6. The District Programme Officer (Establishment) District- Katihar.
7. The District Programme Officer (Establishment), District- Kishanganj.
8. The Block Education Unit, Block Barsoi, District- Katihar through its Secretary i.e. Block Development Officer, Barsoi, District- Katihar.
9. The Block Teacher Appointment Unit, Pothiya, District- through its Secretary i.e. Block Development Officer, Pothiya.
10. The Block Teacher Appointment Unit, Bahadurganj, District- through its Secretary i.e. Block Development Officer, Thakurganj, District- Katihar.
11. The Nagar Parishad, Primary Shikshak Niyojan Unit, Araria through its Executive Officer i.e. Block Development Officer, Araria.
12. The Nagar Parishad, Primary Shikshak Niyojan Unit, Kishanganj through its Executive Officer i.e. Block Development Officer, Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey, Advocate
Mr. Sanjeev Kumar, Advocate
For the Respondent/s : Mr. Md. Raisul Haque- SC
Mr. AC to SC 10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 27-03-2018



Heard learned counsel for the petitioners and State.

2. The petitioners have filed the present writ application for quashing of notification contained in Memo no. 1769 dated 24.11.2009. The petitioners are aggrieved by the dual standard adopted by the respondents in the matter of appointment of teachers.

3. Mr. Bishnu Kant Dubey, learned counsel for the petitioners has drawn the attention of this Court to Annexure-A dated 03.04.2012 wherein the eligibility was prescribed for appointment of teacher in the Subject of Bangla, Urdu and Sanskrit. Clause 6 of Service Condition Rule 2012 reads as follows:

6. “उर्दू शिक्षकों/संस्कृत शिक्षकों/बांग्ला शिक्षकों का नियोजन ।— (i) प्राथमिक एवं मध्य विद्यालय के उर्दू पदों पर बिहार मदरसा शिक्षा बोर्ड द्वारा प्रदत्त मौलवी / आलिम अथवा उर्दू योग्यता रखने वाले (इन्टरमीडियट में न्यूनतम 100 अंकों के उर्दू विषय में उत्तीर्ण) तथा नियम 5 में निर्धारित प्रशिक्षण योग्यताधारी अभ्यर्थियों का नियोजन किया जायेगा।

(ii) संस्कृत शिक्षकों के पदों पर कामेश्वर सिंह दरभंगा संस्कृत विश्वविद्यालय द्वारा प्रदत्त उपशास्त्री / शास्त्री की योग्यता एवं नियम 5 में निर्धारित प्रशिक्षण योग्यता के अभ्यर्थी का नियोजन किया जायेगा।

(iii) बांग्ला शिक्षकों के पदों पर नियम 5 में निर्धारित योग्यता के समतुल्य बांग्ला भाषा में इन्टर स्तर के योग्यताधारी (100 अंकों के बांग्ला विषय में उत्तीर्ण) अथवा बांग्ला के स्नातक की योग्यता के अभ्यर्थियों का नियोजन किया जायेगा।



4. From the counter affidavit, it appears that when the respondents realized that in the subject of Urdu at the Intermediate level examinations are held only for 50 marks, they have amended the eligibility criteria vide Annexure-2, the notification dated 23.01.2014 and in the subject Urdu, they have made a corresponding correction considering the fact that in the subject Urdu at Intermediate level, the examinations are held only for 50 marks, but unfortunately for the subject Bangla where the situation is identical, no corresponding correction was made by the respondents while fixing the eligibility criteria.

5. Mr. Dubey submits that the reason behind relaxing the requirement for appointment of Urdu teacher is also applicable to Bangla and Sanskrit and as such the respondents cannot adopt two different yardsticks in the matter of fixation of eligibility criteria for appointment of teachers.

6. Mr. Dubey with reference to the stand taken by the respondents submits that there is no justification to treat the eligibility criteria differently for the teachers, for the subject Bangla, as in the case of Bangla also examination at the intermediate level are held for only 50 marks and in that view of the matter adopting two different yardstick for Urdu and Bangla appears to be unreasonable and arbitrary. He submits that the eligibility criteria have to be read in a



manner that it is made workable. Referring to the examination pattern prescribed by the Intermediate Education Council and the Bihar School Examination Board he submits that at the intermediate level examination in Urdu and Bangla examination are held only for 50 marks and as such while fixing the eligibility criteria, the respondents cannot adopt two different yardstick and at the same time adopt criterion, which is impossible, as in the absence of examination for 100 marks in the intermediate at Bangla fixing such qualification would amount to prescribing qualification of passing in intermediate examination in Bangla with 100 marks, which is impossible to answer and otherwise it will amount prescribing condition to favour outside the candidates examination of inter level are held for 100 marks. In the State of Bihar the examination at the intermediate level in Bangla is only held for 50 marks and as such the decision on the part of the respondents does not satisfy the requirement of Articles 14 and 16 of the Constitution.

7. Considering the submissions advanced by the parties and looking at the condition incorporated in Annexure-2, the Court is of the considered view that when the intermediate examination is held for only 50 marks prescribing requirement of passing intermediate with Bangla in 100 marks amounts to a condition impossible to fulfill.

8. Mr. Dubey has pointed out that in the year 2013 when



the respondents have directed the examinations of TET at that point of time they have prescribed eligibility of intermediate with 50 marks in the subject of Bangla.

9. In view of the above, the Court is constrained to read down the eligibility condition contained in Annexure-2 so far as Bangla teachers are concerned to mean 50 marks at the intermediate level by following the principles of reading down in view of law laid down by the Apex Court in the case of **Delhi Transport Corporation vs D.T.C. Mazdoor Congress**, reported in **AIR 1991 SC 101**. The respondents are hereby directed to consider the case of the candidates for Bangla teachers, with the eligibility of 50 marks at the intermediate level until curriculum is modified by the Intermediate Council or Bihar School Examination Board and examinations are held for 100 marks at intermediate level.

10. With the aforesaid, the writ application stands allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2018
Transmission Date	

