

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9004 of 2010

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Rinku Kumari, W/O Sri Sheo Shankar Bhagat, R/O Vill Meenapur Nankar, P.S.
Meenapur Panchayat, Meenapur, Distt-Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Inigrated Child Development Scheme Govt. Of Bihar, Patna
3. The Commissioner Tirhut Division , Muzaffarpur
4. The District Magistrate Muzaffarpur
5. The District Programme Officer Muzaffarpur
6. The Child Development Officer Meenapur, Muzaffarpur
7. The Mukhiya , Panchayat Raj Meenapur, Block Meenapur, Distt-Muzaffarpur
8. The Panchayat Sachiv , Panchayat Raj Meenapur, Muzaffarpur
9. Sangeeta Devi W/O Raj Kumar Bhagat R/O Vill Meenapur Nankar, Panchayat Raj, Meenapur, Block Meenapur, Distt-Muzaffarpur

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate
For the Respondent/s : Mr. Kumar Alok, A.C. to S.C.-7
Mr. Shankar Kishore Shahi

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-03-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent no.9.

2. In this case, the petitioner is challenging the order dated 19.01.2010 passed in Service Appeal No.88 of 2009 by the Commissioner, Tirhut Division, Muzaffarpur, whereby and where-under he has set aside the order passed by the District Programme Officer, Muzaffarpur, as contained in memo no.467 dated 15.06.2009 and allowed the appeal, whereby and where-under reinstated Sangeeta Devi, respondent no.9, as an Anganbari Sevika at centre no.253, within the Panchayat Raj, Meenapur, District-



Muzaffarpur.

3. The short facts of this case are that an advertisement was published for appointment of Anganbari Sevika for Centre no.253, village- Meenapur Nankal under Panchayat Raj Meenapur, District- Muzaffarpur, wherein altogether six applications, including the petitioner and respondent no.9 having been filed for appointment on the said post. The petitioner has qualification of 'Madhyama' from Bihar Sanskrit Board, Patna, claiming to be equivalent of matriculation. Aam Sabha vide its proceeding dated 15.09.2008 appointed Sangeeta Devi, respondent no.9, as Anganbari Sevika, as claimed by the petitioner that Sangeeta Devi, respondent no.9 should not be appointed as she had qualification of 'Vidya Vinodani' from Prayag Mahila Vidyapeeth, Allahabad, which has not been recognized by the State of Bihar and having said that the appointment of respondent no.9 is *per se* illegal.

4. As the petitioner felt aggrieved, filed an application before the District Programme Officer, Muzaffarpur, who after hearing both the sides held that the qualification of 'Vidya Vinodani' acquired by the respondent no.9 from Prayag Mahila Vidyapeeth, Allahabad, has not been recognized by the State of Bihar as equivalent to the matriculation inasmuch as her husband, namely,



Raj Kumar Bhagat, was Panch of Ward No.7 and having not tendered his resignation and as such, the appointment of Sanjeeta Devi, respondent no.9, is completely void not sustainable on two counts; first having not requisite qualification as well as her husband-Raj Kumar Bhagat, was Panch of Ward No.7 and Mukhiya and Panchayat Secretary, Gram Panchayat Raj, Meenapur, informed that Raj Kumar Bhagat, did not tender his resignation. As the appointment of Sangeeta, respondent no.9, Devi was found to be illegal, cancelled her appointment, as there were only two persons in fray for the post of Anganbari Sevika for the said centre and after the cancellation of the appointment of Sangeeta Devi, respondent no.9, the present petitioner has a legitimate right over the post. Accordingly, directed to appoint the petitioner after calling the meeting of Aam Sabha.

5. Against that order Sangeeta Devi, respondent no.9, filed an appeal before the Divisional Commissioner, Tirhut Division, Muzaffarpur, which was registered as Service Appeal No.88 of 2009. The Commissioner found that the order of the District Programme Officer, Muzaffarpur, to be illegal and set aside his order. The Commissioner has held that the qualification of 'Vidya Vinodani' equivalent to Matric acquired by Sangeeta Devi, respondent no.9, is a proper qualification as the fact is that the



Government Notification no.3152 dated 25.08.2008 is not applicable in the matter of Sangeeta Devi, respondent no.9 as the qualification of 'Vidya Vinodani' having been derecognized from 25.08.2008 whereas Sangeeta Devi, respondent no.9 has acquired the qualification of "Vidya Vinodani" in the year 2006 from Prayag Mahila Vidyapeeth, Allahabad, i.e. prior to derecognition of degree of 'Vidya Vinodani'. The order of Commissioner, is patently illegal as he has misdirected and misconstrued the application of Bihar Government Notification no.3152 dated 25.08.2008, which never stipulates the applicability of said qualification in the appointment of teacher inasmuch as the respondent no.9 was selected on 15.09.2008, whereas her husband had tendered his resignation on 30.05.2008, photo copy of the same was filed. Ultimately, held that the qualification of 'Vidya Vinodani' degree, equivalent to Matric acquired prior to 25.08.2008 is proper degree. Accordingly, found that the selection of Sangeeta Devi, respondent no.9, was in no way suffers from any illegality, which is under challenge before this Court.

6. Learned counsel for the petitioner submits that Sangeeta Devi, respondent no.9, has qualification of 'Vidya Vinodani' from Prayag Mahila Vidyapeeth, Allahabad, which is claimed to be equivalent to matriculation, but the fact is that this



qualification of 'Vidya Vinodani' was never accepted as qualification equivalent to matriculation and further said that it can be said, at best, the qualification was recognized by the State Government upto 1987, whereas Sangeeta Devi, respondent no.9, has acquired the qualification much thereafter and the appointment has been made recently, so the appointment itself is a void appointment and not sustainable in law.

7. It has further been submitted that as per the Circular issued in 2006, dealing with the appointment and qualification of the Anganbari Sevika, specifically provides that daughter, wife, daughter-in-law, wife of grand-son of Mukhiya, Member of the Panchayat Samiti, Ward Member of Zila Parishad having been excluded for consideration for selection of Anganbari Sevika and submits that in view of specific exclusion of such relations from consideration for appointment of Anganbari Sevika, Sangeeta Devi, respondent no.9, does not come under the zone of consideration for being selected as Anganbari Sevika. He has drawn the attention of this Court to the Circular dated 07.01.1987, wherein it has been provided that certain certificate issued by certain institutions having been recognized by the State of Bihar, wherein the name of Prayag Mahila Vidyapeeth, Allahabad, has been mentioned and the said Circular itself clarifies that the certificate issued by the various



institutions mentioned in the schedule were valid upto 1985 and by the said Circular it has been extended upto 31.12.1987 and on that basis counsel for the petitioner submits that the qualification of 'Vidya Vinodani' acquired from Prayag Mahila Vidyapeeth, Allahabad, cannot be treated to be equivalent to matriculation beyond 1987.

8. In such view of the matter, learned counsel for the petitioner submits that the selection and appointment of respondent no.9 is completely *de hors* to the provision as she does not have necessary requisite qualification to be appointed as Anganbari Sevika as the qualification of 'Vidya Vinodani' having not been recognized by the State of Bihar after 1987 and as such, the selection made by the Aam Sabha is completely illegal and not sustainable in law. On this score, learned counsel for the petitioner submits that the order passed by the Commissioner, is illegal and requires to be interfered with.

9. In contrary, learned counsel for the respondent no.9 submits that the qualification of 'Vidya Vinodani' is a proper and valid qualification and it is equivalent to matriculation and on that basis Sangeeta Deiv, respondent no.9, took admission in the Intermediate College. It has further been submitted that on the basis



of said qualification number of persons having been appointed, they are still working and they are being paid their remuneration. It has further been submitted that the Human Resources Department vide its notification dated 25.08.2008 has declared certain qualification issued by the corresponding institution to be not equivalent, having been not recognized by the State of Bihar as the said notification has been issued in the year 2008, so the presumption is that before issuance of said notification, the qualification of 'Vidya Vinodani' obtained from Prayag Mahila Vidyapeeth, Allahabad, is valid qualification and as such, the plea of the petitioner that she has not a proper qualification is misconstrued and misconceived. It has further been stated that the complaint has not been filed by the petitioner as per the Guidelines issued by the Government of Bihar, wherein Clause-10 provides that only the application on affidavit will be entertained for the enquiry by the District Magistrate or any person appointed by him and as such, when the petitioner has not filed the application as per the guidelines, does not require to be taken into cognizance.

10. Learned counsel for the respondent no.9 has placed reliance on Notification dated 08.04.2016, which provides that any degree of Pravesika, Sahityabhushan and Sahitya Alankar obtained from Hindi Vidyapeeth, Deoghar, has been recognized by the State



Government as proper and valid degree upto the date of issuance of the said Notification and the earlier Government order dated 11.01.1991, which was recognizing the qualification, on the basis of observation given in C.W.J.C. No.13343 of 2011 the various degree granted by the said Vidyapeeth will not be valid after 07.05.2012 but later Notification no.10878 dated 24.08.2017 saved degree issued by 'Hindi Vidyapeeth, Deoghar, upto 08.4.2016 and this order was issued in order to save the earlier appointment and promotion given to different persons. He also placed reliance on Article-358 of the Bihar Education Code, and submitted that Table no.1 itself mentions the qualification of 'Vidya Vinodani' obtained from Prayag Mahila Vidyapeeth, Allahabad, but the excerpt at the top itself mentions that said qualification will be eligible for appointment to the post of service under the Government except to a post of teacher. In case of teachers valid for promotion only.

11. So in the present case, only the question that has to be decided whether the qualification of 'Vidya Vinodani' acquired from the Prayag Mahila Vidyapeeth, Allahabad, is a valid qualification for appointment of Anganbari Sevika as well as it has to be seen that whether on the date of appointment of respondent no.9 her husband had tendered his resignation or was still working as Panch of the Gram Panchayat. Two conflicting statements are emerging as from



the order of the District Programme Officer, Muzaffarpur, wherein it has been mentioned that the Mukhiya of the Gram Panchayat and Panchayat Secretary had not received any resignation letter tendered by the Raj Kumar Bhagat, husband of respondent no.9.

12. This issue with regard to qualification of 'Vidya Vinodani' is no longer *res integra* in view of the decision of the Division Bench of this Court in the case of *State of Bihar and Ors. vs. Mamta Kumar*, reported in *2010(4) PLJR 318*. Though the said judgment was dealing with the 'Madhyama (Visharad) degree' from Hindi Sahitya Sammelan, Allahabad, as in that case the candidates were holding the qualification of 'Madhyama' from Hindi Sahitya Samelan, Allahabad, and the Court has considered the Article-358 of the Bihar Education Code, which enumerates different examinations conducted by different institutions, wherein the table which is the part of Article-358 does not mention the name of Hindi Sahitya Sammelan, Allahabad, the said qualification was never recognized by the State of Bihar and it has been held that granting recognition with respect to particular institution is completely an administrative function of the State. Further held that with respect to equivalence of qualification on the basis of the course of study and the examination cannot be basis to be made by the Court in exercise of power under Article 226 to declare qualification to be equivalent to a particular



degree and proper qualification for appointment as it is primarily a executive function. The government frames a policy after taking into consideration number of facts and circumstance, take the experts opinion and other relevant consideration and only thereafter having receiving all the information, the Government declares the particular qualification equivalent to others. The power of judicial review, in such matter, is limited. The Court can interfere only when the authorities have acted arbitrarily or in violation of statutory or constitutional provision. The Court cannot sit as an appellate forum over the policy matter, it has no power to reframe the policy matter and in case of policy matter is found suffering from illegal infirmity, the Court can struck down the policy and send back to the authority for reconsideration and reframe the policy in accordance with law.

13. It will be relevant to quote paragraph nos. 12, 14, 22, 24, 26 and 28 of the said judgment, which read as under:-

“12. In the light of the aforesaid provisions, the submission of Mr. Lalit Kishore, learned counsel for the State, seems to be correct that at least the State of Bihar had never recognized the qualification of Madhyama (Visharad) of Hindi Sahitya Sammelan, Allahabad to be an equivalent qualification of Intermediate.

14. In that view of the matter, at least the letter of Hindi Sahitya Sammelan, Prayag (Hindi Vishvavidalaya) dated 15.6.1973 cannot be a document to clinch the issue that



Hindi Sahitya Sammelan, Allahabad at all point of time including in the year 2003 to 2005 when the respondent writ petitioner had passed their Madhyama (Visharad) examination from Hindi Sahitya Sammelan, Allahabad was either a recognized institution or its Madhyama examination was held to be equivalent to Intermediate by the State of Bihar for appointment on the post of teacher. Moreover, the provisions under Article 358 was extended only upto 30.12.1987 vide personnel department letter no. 184 dated 7th of January, 1987 and Educational Department's letter no. 9/M-3-0600/86E 261 dated 16th February, 1988. Thus, adopting the line of least resistance, since there is no document muchless an authenticated Government order to show that the qualification of Madhyama (Visharad) examination from Hindi Sahitya Sammelan, Allahabad was ever recognized by the State of Bihar as equivalent to Intermediate, even if the plea of the counsel for the respondent writ petitioner is accepted that their qualification of Madhyama was recognized by the State Government as equivalent to Intermediate, the same could be valid up to 31.12.1987 only. The respondent writ petitioners however had admittedly passed such Madhyama (Visharad) examination from Hindi Sahitya Sammelan, Allahabad in the year 2003 to 2005 and as such atleast they cannot claim their Madhyama examination had stood recognized on the date they had either applied for the post or were appointed as Panchayat Shikshak in the year 2006.

22. It has also been indicated above that for appointment on the post of Teacher, the Government of Bihar had never recognized the equivalent of Madhyama (Visharad) to be equivalent to Intermediate. Attention of this Court



has also been drawn towards the order of the Division Bench dated 17.3.1990 in the case of Bibha.Kumari Vs. State of Bihar & Ors. (C.W.J.C. No. 223 of 1990). From reading of the text of the order of the Bibha Kumari (supra), it would appear that the same was with regard to the admission in teacher training course and the petitioner Bibha Kumari had claimed to have possessed Prathama from Hindu University, Allahabad though in the said order, the Division Bench had remitted the matter back for reconsideration. This much therefore is clear that the decision in Babita Kumari's case (supra) was not related to employment on the basis of Madhyama (Visharad) of Hindi Sahitya Sammelan, Allahabad.

*24. Thus, neither the provision of law nor the precedents, as referred to and relied by the learned counsel for the respondent writ petitioners, would enable this Court to come to an unequivocal conclusion that for appointment on the post of Teacher, the qualification of Madhyama (Visharad) from Hindi Sahitya Sammelan, Allahabad was ever recognized by the State Government of Bihar to be equivalent to Intermediate. The laying down of qualification for appointment on the post is exclusively in the hands of the employer and the interference of the Court by way of judicial review is very limited. As a matter of fact, this very Rule-8 of the Rules had been subject matter of challenge in the case of **Parvez Alam & Ors. Vs. The State of Bihar & Ors.** reported in **2009(2)PLJR 213** wherein the Division Bench repelling the challenge to the said Rule within the limited parameter of judicial review had held as follows:-*

“16. We are of the opinion that the basic qualification



needed for appointment, primarily needs to be decided by rule making authority. While amending Rule 8 of Rules 2006 by Rule 4 of Rules 2008 the State Government in exercise of its rule making power has excluded the qualification of degrees in language, including Up-shastri or Maulvi. In such situation this Court in exercise of its power of judicial review cannot term the same to be arbitrary. The purported similarity in the curriculum of the Intermediate examination and Up-Shastri/Maulvi examination is of no consequence. It is well settled that qualification for appointment is a matter within the domain of the body, which is competent to make that legislation. Simply because in earlier years persons holding the qualification of Maulvi and Up-shastri were considered eligible in terms of the rule, later on, the plea that such persons cannot be excluded from consideration by making amendment in the rule in accordance with law does not commend us. Here the rules have been amended in accordance with law and the authority conferred with the power making rule has by the offending rule, specifically excluded the qualification of Maulvi and Up-Shastri, rendering persons holding such qualification ineligible. The plea that contents of the teaching of Up-Shastri and Maulvi is the same as that of Intermediate, we are of the opinion that it is not within the scope of judicial review and is a matter of legislative policy.

*17. The view which we have taken finds support from a Division Bench judgment of this Court in the case of **Dhirendra Kumar Singh & Ors. Vs. State of Bihar & Others** [2008(1)PLJR 583] in which it has been held*



as follows:-

Whether the rules governing recruitment for any post, in eligibility criterion prescribed for the post must include other equivalent qualification is a matter of legislative policy and not for this Court to decide. Even where rules provide for alternate to main and substantive qualification by recognizing equivalent qualification to be taken into consideration, the question of considering any qualification, is a matter of expert body to decide. Therefore, it is inept for this Court to enter into that territory and decide upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teacher' training courses referred therein are training qualifications of different grades and cannot by any means be equivalent with each other, a priori. It hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise, a certificate by itself is not equivalent to a degree or diploma in the subject. Learned counsel for the petitioners had taken pains to explain the content of training of teaching under different training courses for the purpose of impressing upon the Court that there is hardly any distinction between different courses of training imparted to a candidate. We are afraid, this is not the scope for judicial review while examining the validity of the legislation providing eligibility criteria. Thus is a matter of legislative policy and it is within the domain of the legislative body as to what should be the policy to provide requisite qualification for



offering appointment to the intending incumbent.”

*26. In the opinion of this Court, the equivalence of qualification on the basis of course of studies and the examination cannot be made by this Court in exercise of power under Article 226 of the Constitution of India. Reliance in this connection may be made to the Division Bench Judgment of this Court in the case of **Satyendra Singh & Ors. Vs. Sanjay Kumar & Ors.** reported in **2001(1) PLJR 104** wherein this Court had held as follows:-*

12. Prescribing qualification for a particular post by the competent authority is a policy decision. The Government frames a policy after taking into consideration the number of facts and circumstances, expert opinion and other relevant considerations. The power of judicial review in such matters is limited. The Court can interfere only when the authorities have acted arbitrarily or in violation of the statutory or constitutional provisions. The Court does not sit as an appellate forum in disguise over the policy matter. It has no power to re-frame the policy matter and in case the policy matter is found suffering from any legal infirmities as indicted above, then the same is to be struck down and the matter is sent to the authority to consider the policy matter in accordance with law laid down. If the rules have been framed prescribing the qualification for a particular post, the Court has no power to re-frame the rules or supplement the rule by adding additional qualification for the simple reason that this is a function of the appointing and in the case of any legal lacuna the Court can only direct the



appointing authority to consider the matter on the basis of the expert opinion and other relevant consideration. The Court cannot on the basis of the documents appended with the affidavit determine the equivalence or addition of qualification in the recruitment rules. 15. Thus, the law is settled that when the recruitment rules provide for a requisite qualification and the question arises as to whether any other qualification is equivalent to the qualification prescribed in the recruitment rules or not, then that question has to be decided by the competent authority and the Court cannot amend the rule or reframe it and the Court can only direct the concerned authority to re-examine the matter specially in a technical matter, like this, after obtaining the expert's opinion. The Court cannot take a final decision on the basis of affidavit and the opinion of the expert and decide such matter. The power of judicial review in such a matter is very limited and in case if the State Government decides the matter and the same is found to be arbitrary, mala fide then the Court will consider the same keeping in view the scope of judicial review in such matter. 18. The question involved in the case relates to filling up technical posts and as such it cannot be decided on the basis of certain documents appended with the affidavit by the Court in view of the settled law regarding the power of judicial review by the Apex Court in such matter. In that view of the matter, the learned Single Judge was not justified in deciding the question that qualification possessed by respondent no. 1 was equivalent to the qualification prescribed in the Recruitment Rules inasmuch as that



amounts to amending the rules and re-framing the rules which is not permissible in law...”

28. Thus in our considered opinion, the judgment of the Apex Court in the case of Lata Arun (supra) is a complete answer in all respect that examination of Madhyama (Visharad) passed by the writ petitions from Hindi Sahitya Sammelan, Allahabad by itself cannot be treated to be equivalent of Intermediate examination as prescribed under the Rules specially when its equivalence was never recognized by the State Government of Bihar.”

14. In the present case, admittedly, the Notification which has been placed reliance by Sangeet Devi, respondent no.9, the recognition of said qualification as an equivalent to matriculation at best can be extended upto 1987 and that too qualification cannot be taken into consideration for the appointment of teachers, in such view of the matter, the selection of Sangeet Devi, respondent no.9 on the post of Anganbari Sevika cannot be said to be a valid exercise of power of Aam Sabha. The District Programme Officer has rightly observed that said qualification was not recognized by the State of Bihar. The letter dated 3152 dated 25.08.2008 itself is a clarificatory in nature not a declaratory in nature that the said qualification was recognized by the State of Bihar upto the said date.

15. As learned counsel for Sangeeta Devi, respondent no.9,



has not brought any notification before this Court to show that the said qualification was ever been accepted as a valid educational qualification for the purpose of appointment as a teacher or Anganbari Sevika. The Notification issued by the State of Bihar, recognizing the qualification of 'Vidya Vinodani' as equivalent to matriculation, recognition of that certificate cannot be extended beyond 1987 and no such Notification has been brought by the respondent no.9 to show that said qualification ever recognized by the State of Bihar thereafter.

16. This Court is not required to deal with the other point with regard to issue of resignation tendered by the husband of respondent no.9 as this Court has already held the appointment of Sangeeta Devi, respondent no.9, to be illegal on account of improper certificate and as such, it is not required to be gone into that aspect of the matter. Further, Sangeeta Devi, respondent no.9, claimed that the petition was not properly filed. This point was never taken by the respondent no.9 either before the District Programme Officer or before the Commissioner. For the first time, she is taking this point, cannot be allowed to be raised as the point which has been raised by Sangeeta Devi, respondent no.9, at this stage, any defect which was there in the application could be cured by the petitioner either before the District Programme Officer or before the Commissioner.



17. As this Court has arrived to a finding that Sangeeta Devi, respondent no.9, was not holding a proper requisite qualification and as such, her appointment by the Aam Sabha is completely illegal and the order passed by the District Programme Officer, Muzaffarpur is completely legal and same is affirmed and the order passed by the Commissioner, Tirhut Division, Muzaffarpur, dated 19.01.2010 is misdirected and misconstrued cannot be allowed to sustain and the same is set aside.

18. Accordingly, this writ petition is allowed. The respondent authorities are directed to appoint the petitioner on the post of Anganbari Sevika.

19. There is a complaint made by the petitioner that many persons holding the qualification of ‘Vidya Vinodani’ are still working as Anganbari Sevika. Let the respondent authorities examine this fact and take appropriate steps after giving due notice to the person concerned.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.03.2018
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