

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17633 of 2015

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1. Vijendra Kumar Manjhi, Son of Late Rajeshwar Manjhi, Resident of Majhaulia, P.S. Dumara, District – Sitamarhi.
 2. Brajesh Kumar Manjhi, Son of Late Sahdeo Manjhi Resident of village - Bulakipur, P.S. Riga, District – Sitamarhi.
 3. Rudal Sada, Son of Kanu Sada, Resident of Village - Bazitpur, P.S. Bazitpur, District – Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The District Programme Officer, Sitamarhi.
4. The District Project Officer (SSA/B.E.P.) Sitamarhi.
5. The Co - ordinate, Adult Education (SSA), Sitamarhi.
6. The Block Education Officer, DUMRA, Sitamarhi.
7. The Head Master, Govt. Middle School, Rampur Majhaulia, Dumra, Sitamarhi.
8. The Head Master, Govt. Middle School, Sonar, District – Sitamarhi.
9. The Head Master, Govt. Primary School, Mushari Tola, Bazitpur, District Sitamarhi.
10. The State Project Director, Bihar Education Project Council, Saidpur, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Naresh Chandra Verma and Mr. Ajay Kumar Verma, Advocates
For the State	:	Mr. Anil Kumar Singh, G.P. 26
For the BEPC	:	Mr. Girijesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-04-2018

Heard learned counsel for the petitioners; State and
Bihar Education Project Council.

2. The petitioners have moved the Court for the
following reliefs:

*“I. For appropriate writ/direction/
order to the Respondents to allow the petitioners
to continue their work on the post of Tola Sevak.
II. For payment of dues*



salary/Honorarium to the petitioners since due date.

III. For a direction to the Respondents to make regular payment of Salary/Honorarium of the petitioners.

IV. For any other Relief/Reliefs as your Lordships deem fit and proper in the facts and circumstances of this case.”

3. The admitted fact is limited to the extent that the petitioners were engaged as Tola Sevak in September, 2009 for one year. Thereafter, there is nothing on record to show as to whether they continued beyond the period as no document has been brought or averments made in the writ petition that they were re-engaged or their services extended.

4. Learned counsel for the petitioners submitted that they have worked till July, 2014 but their honorarium has not been paid since January, 2011, February, 2011 and September, 2010 respectively. It was submitted that the objection of the authorities is that the petitioners had obtained *Madhyama* from the Bihar Sanskrit Shiksha Board, which is not equivalent to matriculation qualification granted by the Bihar School Examination Board. Learned counsel submitted that the stand is erroneous as the petitioners also possess Intermediate qualification. In this connection, learned counsel relied upon a decision of a co-ordinate Bench of this Court dated 18.09.2012 in C.W.J.C. No. 17069 of 2012 in the case of **Ram**



Bilash Chaudhary Vs. State of Bihar & Ors., in which it has been held that once there is a higher qualification, the same cannot be a disqualification and direction has been given to consider his case.

5. Learned counsel for the State and Bihar Education Project Council submitted that first of all, the writ petition itself is not maintainable in view of the decision of a co-ordinate Bench of this Court dated 17.08.2015 in C.W.J.C. No. 12390 of 2015 in the case of **Ram Lakhan Ram Vs. The State of Bihar & Ors.**, in which it has been held that Tola Sevak is not a government post and qualification of Madhyama from Sanskrit Shiksha Board not being the educational qualification required for the post of Tola Sevak, the question of equivalence can hardly be any use for assistance to the petitioners which has been upheld by the Division Bench by order dated 02.02.2017 in L.P.A. No. 2185 of 2015 in the case of **Ram Lakhan Ram Vs. The State of Bihar & Ors.**, where it has been held that selection or engagement or hiring of the Tola Sevak is not any permanent appointment under the State, which is required to be considered under Article 226 of the Constitution of India.

6. Learned counsel further submitted that in any view of the matter, there being nothing on record to indicate that the petitioners have any right to continue or have continued on the post beyond 2010, in the eyes of law, no right can be asserted. It was



submitted that their term coming to an end in 2010 and even if they had continued and were paid, the same cannot be made a ground for seeking any direction for continuing on the post any further. It was further contended that even the period for which the petitioners claim arrears of honorarium, it is disputed that they had ever worked. Learned counsel submitted that co-ordinate Benches by order dated 11.02.2014 in C.W.J.C. No. 23256 of 2012 in the case of **Vijay Kumar Mahto & Ors. Vs. The State of Bihar & Ors.** as well as order dated 11.03.2016 in C.W.J.C. No. 5607 of 2013 in the case of **Kameshwar Choudhary Vs. The State of Bihar & Ors.,** had observed that when there is disputed question of fact whether the petitioners had worked, the parties have to approach the Civil Court for proper adjudication of the case and thus, the petitioners may move before the Civil Court of competent jurisdiction in the matter.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any occasion to interfere in the matter for the reason that beyond 2010, there is nothing on record to show that the petitioners were legally entitled to continue as Tola Sevak. Thus, a direction to permit them to continue and get payment is not maintainable. Moreover, the writ petition has been filed in the year



2015, after almost five years of the period for which they were engaged having expired, the same is also hit by the principles of delay and laches. Further, as the period beyond the year 2010 with regard to the petitioners having continued as Tola Sevak has seriously been disputed and contested by the respondents, the Court is in agreement with the view taken by the co-ordinate Benches that such matters relating to facts have to be adjudicated before the Civil Court of competent jurisdiction.

8. In view thereof, the writ petition stands disposed off with liberty to the petitioners to approach the Civil Court of competent jurisdiction with regard to any claim they may have relating to payment of honorarium for the period they may have worked as Tola Sevak, which has not been paid to them.

(Ahsanuddin Amanullah, J.)

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