

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6448 of 2012

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Sharngdhoar Prasad Rai Son of Late Suresh Prasad Rai, Resident of Village-
Chapri (Dadpur), P.S.- Amarpur, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resource Department, government of Bihar, New Secretariat, Patna.
3. The Directory, Secondary Education, Human Resource Department, Government of Bihar, New Secretariat, Patna.
4. The Chairman, Bihar Sanskrit Shiksha Board, Patna.
5. The Secretary, Bihar Sanskrit Shiksha Board, Patna.
6. The Regional Deputy Director of Education, Munger.
7. The District Education Officer, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Advocate
For the Respondent/s : Mr. Ravi Kumar AC to AAG 13.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

9 02-07-2018 Heard Mr. Chitranjan Sinha learned counsel appearing on behalf of the petitioner and learned counsel for the State as well as counsel appearing for Sanskrit Siksha Board.

Learned counsel for the petitioner submits that the respondents have made pick and chose and discriminated the petitioner. In similar circumstance other have been accommodated and their service was approved on the qualification of graduation but in the case of petitioner they have adopted different yardstick although in the advertisement vide Annexure-4, respondents have indicated that Graduate/ Acharya is a qualification prescribed. He further submits that



subsequently the petitioner has also acquired the qualification of Acharaya and as such there is no impediment in respondents approving the service of the petitioner.

Respondents may consider the case of the petitioner at least from the date the petitioner has acquired the eligibility of Acharya in the year 2008/09. Mr. Sinha submits that taking the line of least resistance the case of petitioner may be directed to consider for approval at least from the date of acquiring qualification of Acharaya. Counsel appearing on behalf of the Sanskrit Siksha board submits that petitioner was appointed under the rules while prescribing Acharaya and not the graduate. However, he has no answer to the issue raised by the counsel for the petitioner that in the advertisement they have indicated Graduate/ Acharaya. In that view of the matter Board cannot make a departure from its own advertisement. Advertisement is rule of the game in the matter of selection and appointment. Since respondents have invited the application after publishing the advertisement they cannot made a departure and refuse approval saying that petitioner was not Acharya on the date of submission of application for appointment.

Mr. Sinha further submitted that in view of the judgment of the Apex Court in Ram Swarup case reported in



AIR 1978 (SC) 1536 and the subsequent Judgment of the Apex Court in the case of Shainda Hasan reported in AIR 1990 (SC) 1381. The respondents have to approve the service of the petitioner.

Considering the judgment of Apex Court in case of Ram Swarup as well as Saida Khatoon the incumbent who was lacking qualification initially but acquired eligibility subsequently the Court protected the interest of the person holding the post. In the present case the petitioner is working on the post for more than a decade and as such the Court is not in a position to accept the contention of the counsel for the Board that the petitioner was not having requisite qualification for the approval of his candidature for the reason; firstly the advertisement was issued by the respondent indicating Acharya/Graduate and the petitioner was holding qualification of Graduate in terms of the advertisement. Secondly he has acquired qualification of Acharaya and in view of the Judgment of the Apex Court in Ram Swarup (Supra) and in the case of Shainda Hasan AIR 1990 SC 1381 the writ petition is allowed and impugned Order contained in Annexure-16 is hereby quashed. Respondents are directed to take a fresh decision with regard to the approval of the service of the petitioner at least



from the date he acquired the qualification of Acharaya. The said decision granting approval of the petitioner be taken by the respondent within the maximum of period of three months from today, respondents are also directed to ensure the payment of consequential benefits to the petitioner within a further period of one month from the decision on approval of service of the petitioner.

(Anil Kumar Upadhyay, J)

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