

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10620 of 2017

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Ram Sundar Mahto, S/o late Raghunath Mahto, Resident of- Mahadeo Chauri, P.S. Lakhnaur, District- Madhubani, presently posted in Middle School Umri, Lakhnaur, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The Collector, Madhubani.
4. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
5. The District Education Officer-cum- Chairman, District Promotion Committee, Madhubani.
6. The District Programme Officer (Establishment), Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar, Advocate
For the Respondent/s : Mr. Narendra Kumar, AC to GP20

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 19-04-2018

Heard learned counsel for the petitioner and State.

2. Petitioner has filed the present writ application for a direction to the respondents to consider his case for grant of promotion as Headmaster considering his seniority.

3. Learned counsel for the petitioner submits that the petitioner was appointed in Matric trained scale on 03.10.1985. In the year 1986, the petitioner was sent for in-service training in the 1986-88 sessions and he passed the training examination on 01.05.1989. Thereafter, he was granted Matric trained scale. In the year 2011, on coming into force the promotion of Nationalized Elementary Teachers



Promotion Rule, 2011, the petitioner was granted promotion in graduate trained scale and he was posted in Upgraded Middle School Umri, Lakhnaur, District Madhubani vide memo No. 4377 dated 18.09.2013. The said promotion was made effective from retrospective date i.e. 28.06.2012 vide memo No. 5325 dated 12.12.2013. The respondents thereafter considered the case for grant of promotion to the post of Headmaster. During the process of finalizing list, the juniors were included in the list and granted promotion to the post of Headmaster. According to the petitioner, he was arbitrarily excluded from the list of eligible teachers for promotion to the post of headmaster. Now the respondents are taking plea that petitioner was initially appointed against the post of Physical Trained Teacher and such he is not legible for grant of promotion in terms of 2011 Rules. Specific stand of the respondent in Paragraph 10 and 11 of the counter affidavit reads as follows:-

“10. That it is humbly stated that since, the petitioner was originally appointed as physical teacher which comes under the category of untrained teacher, he was/is not entitled to get promotion in any grade and therefore, while considering the cases of promotion on the post of Head Master, the case of the petitioner was not taken into consideration in view of the specific provision under rule -16 of the Bihar Rajkiyakrit Parambhik Vidyalay Shikshak



Pronnati Niyamawali. 2011 which speaks in clear terms that 'अप्रशिक्षित शिक्षक किसी भी ग्रेड में प्रान्ति के पात्र नहीं होंगे।'

11. That it is further stated that the Director, Primary Education, Bihar vide his letter contained in memo no. -1229 dated 29.11.2016 has reiterated the same thing in view of guideline sought by the DEO/DPO (Esttt), Sheikhpura, a copy of the same was also communicated to all the DEOs & DPOs (Estt.) of the State intimating therein that the physical teachers were appointed in the Middle Schools of the State for imparting physical education and they were never treated as general teacher and if they had acquired additional qualification irrespective of their basic appointment, the same cannot be taken into account for the purposes of promotion and they cannot be granted benefits of promotion like other regular teachers.”

4. On considering of the rival submissions and on scrutiny of the materials available on record, the undisputed facts are as follows:

5. The petitioner was appointed way back in the year 1985. From the appointment letter, it appears that he was treated as untrained teacher. It is also admitted the fact that the petitioner was appointed with a condition that he has to obtain two years training during service. It is also not in disputed that the petitioner was



allowed to complete in service training and he passed examination after two years training on 01.05.1989. It is also not in dispute that the petitioner was granted promotion in graduate trained scale and he was posted in Upgraded Middle School Umri, Lakhnaur, District Madhubani on 18.09.2013.

6. In view of the aforesaid admitted factual position, the submission of the learned counsel for the petitioner is well founded that the respondents have treated the petitioner right from 1989 to 2014 as Trained Assistant Teacher and after representing the petitioner for nearly 24 years that the petitioner is a Trained Assistant Teacher taking a summer salt and refusing to recognize the petitioner as trained teacher is unsustainable in law.

7. Considering the aforesaid facts and circumstances, the Court is of the view that the respondents cannot be allowed to resile from the stand which they have represented through their conduct for last more than 25 years and at the stage of considering the case for grant of promotion as headmaster, the action of the respondents in excluding the petitioner is most unreasonable and violative of Articles 14 and 16 of the Constitution of India being unreasonable and arbitrary action of the respondents and such action cannot sustain

8. Accordingly, the writ application is allowed. The



respondents are directed to treat the petitioner as trained teacher and eligible for grant of promotion as headmaster. The respondents are accordingly directed to include the petitioner in the seniority list for promotion. The entire exercise in this regard must be completed by the respondents within a maximum period of three months from the date of receipt/production of a copy of this order.

9. It is needless to state here that the respondents are required to extend all consequential benefits to this petitioner from the date such benefits are granted to junior to the petitioner.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2018
Transmission Date	

