

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16901 of 2008

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1. Katyanti Devi Atharva, wife of Pranav Kumar Atharva, residence of village-Dilawarpur, Post-Bihta, Police Station-Bihta, District- Patna.
 2. Shanti Devi, wife of Sajjan Paswan, as residence of village-Sikandrapur, Post-Katesar, Police Station-Bihta, District- Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. The Director, Panchayati Raj Department, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Block Development Officer, Bihta, District- Patna.
5. The Block Panchayat Raj Officer, Bihta, District-Patna.
6. The Sarpanch, Gram Panchayat Sikandrapur, P.S-Bihta, District-Patna.
7. The Sarpanch, Gram Panchayat, Dilwarpur, P.S.-Bihta, District- Patna.
8. Munni Devi, wife of Ranjeet Kumar Prajapati, Village- Dilwarpur, Post Bihta, P.S.-Bihta, District- Patna.
9. Babita Kumari, wife of Yogendra Paswan, residence of village-Badauli, Post-Katesar, P.S.-Bihta, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s	: Mr. Jagdish Prasad, Advocate Mr. Ujjawal Kumar, Advocate
For the State	: Mr. Rakesh Kr. Shrivastava, A.C. to G.P-15
For Respondent No.9	: Mr. Chhotelal Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-01-2018

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

2. This petition is confined to petitioner no.2, namely, Shanti Devi as vide order dated 01.10.2015 the case of petitioner no.1, namely, Katyanti Devi Atharva, has been withdrawn as not pressed. So, the discussion is only confined to petitioner no.2- Shanti Devi.



3. Interlocutory Application No.372 of 2018 filed by Katyanti Devi Atharva, is permitted to be withdrawn.

4. In the present case, the petitioner is challenging the memo no.2274 dated 27.08.2010, whereby the service of the petitioner was dispensed with and at the same time Babita Kumari, respondent no.9 was appointed in service.

5. The petitioner and Babita Kumari, respondent no.9 along with others, had applied for the post of Secretary, Gram Kachahari under Bihar Gram Kachhari (Employment, Service Condition and Duties) Rules, 2007, in which minimum qualification as Matric has been provided for appointment of Secretary, Gram Kachahari. The petitioner at the initial stage was appointed as Secretary, Gram Kachahari, but later on, she was terminated from service. Again he was brought in service vide memo no.1053 dated 27.06.2009 in view of order passed in C.W.J.C. No.13905 of 2007. The order was passed on account of amendment in the rule vide notification no.28 dated 05.01.2009 applicable with effect from 31.01.2008, by which Madhyama has been treated to be equivalent to matriculation, was the basis for her re-employment and led to termination of service of Babita Kumari. But again, in view of the order passed in C.W.J.C. No.6762 of 2009 (Mahavir Choudhary vs.



State of Bihar and Ors.), the service of the petitioner was terminated, wherein this Court has held that the executive fiat cannot be contrary to the statutory rules and the same is not sustainable.

6. In the present case, the present petitioner-Shanti Devi was appointed as Secretary, Gram Kachahari, before 31.01.2008 and at the relevant time the qualification for appointment of Secretary, Gram Kachahari, was matriculation not equivalence to the matriculation. This issue has been dealt with by this Court in C.W.J.C. No.15259 of 2007 (Annexure-E to the counter affidavit filed by the respondent nos. 3 and 4), wherein the relevant portion dealing with the qualification has been quoted and arrived to a finding the word 'equivalent' is not there but the qualification has been mentioned as matriculation. At the later stage, amendment to Rule was brought by notification published in the Gazette notification dated 05.01.2009, wherein the qualification portion has been amended as matriculation or equivalent to matriculation has been made essential qualification. This notification has been made effective from 31.01.2008, meaning thereby those who are holding the qualification of matriculation prior to 31.01.2008 were only entitled for consideration for appointment of Secretary, Gram Kachahari as before that date the qualification was only matriculation and no equivalence has been mentioned, hence, any person claiming



to be the equivalence of matriculation cannot be said, holding requisite qualification for the purposes of appointment of Secretary, Gram Kachahari.

7. The issue is no longer *res integra* as in C.W.J.C. No.1996 of 2010 (Kiran Kumari and Ors. vs. The State of Bihar and Ors.) the date which has been mentioned in the notification was challenged. The ground was taken that the date which has been prescribed i.e. 31.01.2008 is completely arbitrary having no nexus to the object sought to be achieved. The fixation of artificial date is unreasonable, violates the Article-14 of the Constitution of India. The Court has refused to accept the contention raised in the said writ petitioner and having held that it is a policy matter and some date has to be fixed and did not find any substance in the submission that the action in fixing the effective date of notification as 31.01.2008 is offending to Article-14 of the Constitution of India.

8. The present case was taken up on 16.11.2017 wherein the petitioner has taken the plea that Katyanti Devi Atharva and the present petitioner-Shanti Devi, were holding the qualification of Madhyama, but after re-employment the petitioner has been terminated from service but Katyanti Devi Atharva still discharging her duties and where-after this Court has asked the State to give reply



on following issues:-

“(i) When Katyanti Devi Atharva and Shanti Devi both are holding the qualification of Madhyama, Katyanti Devi Atharva has been allowed to work as a Gram Kachahari Secretary whereas Shanti Devi has been removed from service.

(ii) Whether the petitioner no.2, before termination from service, was given any notice pror to take any action?”

9. In pursuance of the query made by this Court the State has filed the supplementary counter affidavit, wherein it has been brought to the notice of this Court that the service of Katyanti Devi has been dispensed with vide memo no.09 dated 04.01.2018 and further, the second query has been replied by making a specific averment that before termination of service the petitioner was given notice vide memo no.1972 dated 21.7.2010 and where-after the services of the petitioner has been dispensed with.

10. Learned counsel for the petitioner submits that when the petitioner was again appointed on the basis of her Madhyama certificate she should not have been terminated from service as Madhyama is equivalent to matriculation, but the question would arise for consideration that the petitioner has entered into the service before 31.01.2008 and at that time the requisite qualification was



matriculation and equivalence to matriculation has been added by Gazette notification dated 05.01.2009, making it retrospective from 31.01.2008, in such circumstance, the entry of those persons before 31.01.2008 on the basis of qualification of Madhyama cannot be sustained as at the relevant time there was no qualification of equivalence, only the qualification was matriculation was stipulated, those who were possessing the qualification of Matriculation can only be appointed on the post of Secretary, Gram Kachahari.

11. As in the present case, the Katyanti Devi Atharva is no longer in service as well as Annexure-K has not been challenged by the petitioner, which reflects that the notice was served upon the petitioner and only thereafter the action has been taken.

12. In such view of the matter, this Court does not find any merit in the present case. Accordingly, this writ application is dismissed. However, this order is only confined to petitioner-Shanti Devi and not in any way effect the right of Katyanti Devi Atharva.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	20.01.2018
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