

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4133 of 2011

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Shashi Bhushan Mishra S/O Shree Muktinath Mishra Assistant Teacher,
Sardar Mangal Singh Project Girls High School, Mainatar, P.S. And Block-
Mainatar, Distt.- West Champaran

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Principal Secretary Human Resources Development Department, Government Of Bihar, New Secretariat, Vikas Bhawan, Patna
2. The Principal Secretary Human Resources Development Department, Government Of Bihar, New Secretariat, Vikas Bhawan, Patna
3. The Director (SECONDARY Education) Human Resources Development Department, Bihar Secondary Education Office, Budh Marg, Patna
4. The Regional Deputy Director Of Education, Tirhut Division, Muzaffarpur
5. The District Education Officer, West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Panday Mr. Ajay Kumar Sharma
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 03-10-2018

Heard learned counsel for the petitioner and learned counsel appearing for the State.

Mr. Bijay Kumar Pandey, learned counsel appearing on behalf of the petitioner submits that the present writ petition was allowed by order dated 04.04.2012. Thereafter the respondents have filed Civil Review No. 527 of 2012. Review application was allowed vide order dated 07.08.2013 on the ground that complete facts in relation to the decision taken with regard to the petitioner was not brought to the notice of the Court and the Hon'ble Court



granted liberty to the State to file detailed counter affidavit. After the order passed in Civil Review No. 527 of 2012, in the present writ application counter affidavit was filed, wherein the stand has been taken that the case of the petitioner of CWJC No. 4133 of 2011 and CWJC No. 18860 of 2011 are distinguishable and as such the order passed in CWJC No. 18860 of 2011 was complied with whereas in the case of the present petitioner the order was not implemented. In paragraph-6 of the counter affidavit they have taken the stand that appointment of the petitioner is after the cut-off date, i.e. 09.09.1989, whereas in terms of letter no. 142 dated 04.02.1989 the cut-off date is 04.02.1989.

Learned counsel appearing on behalf of the petitioner submitted that the State is now changing its stand to justify the illegal act. Referring to Annexure-1 he submits that in Annexure-1 the reason assigned for rejecting the claim of the petitioner was that he was over-age, whereas in the counter affidavit they have come out with a case that the date of appointment of the petitioner is subsequent to the cut-off date 04.02.1989. So far as the issue of over-age is concerned, the case is covered by the decision of a Full Bench of this Court in the case of ***Project Uchcha Vidyalaya Shikshak Sangh vs State of Bihar & Ors. [2001 (1) PLJR 287]***. The other issue with regard to appointment after the cut-off date is



concerned, the Court has held out that in terms of the judgment of the Full Bench and the scheme under letter no. 142 dated 04.02.1989, the cut-off date would be the date on which selection has been approved.

Considering the aforesaid, the objection of the respondent in rejecting the claim of the petitioner for grant of approval of service does not find any merit. The Court, in its totality of the facts and circumstances, does not approve the stand of the respondents that the petitioner's appointment is subsequent to the cut-off date as the school in question was approved on selection vide notification no. 62 dated 19.02.2009.

In view of the above, the writ application is allowed. The orders as contained in Annexures 1 and 1/A are quashed. The respondents are directed to consider the grant of approval of service of the petitioner afresh in the light of the judgment of the Full Bench in the case of *Project Uchcha Vidyalaya Shikshak Sangh* (supra) and the order passed by this Court on 14.09.2018 in CWJC No. 17284 of 2011 and analogous writ petition.

mrl./-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09/10/2018
Transmission Date	N.A.

