

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5439 of 2017

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1. Madan Prasad, S/o Late Kameshwar Prasad, R/o Village- Hemanchak, P.O.- Sorampur, P.S.- Naubatpur, District- Patna.

2. Shiva Kumar Prasad, S/o Nandu Ram, R/o Village- Abbulodipur, P.O.- Sorampur, P.S.- Jainpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.

2. The Director, Primary Education, Education Department, Govt. of Bihar, New Secretariat, Patna.

3. The District Magistrate, Patna.

4. The District Education Officer, Patna.

5. The District Program Officer, Patna.

6. The Block Development Officer, Naubatpur, Patna.

7. The Block Education Officer, Naubatpur, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate.

For the Respondent/s : Mr. Lalit Kishore, AG.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 22-06-2018

The present Writ Application has been preferred for a direction to the respondent authorities to amend Rule 8(3) of the Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules').



2. It is the grievance of the petitioners that prior to coming into force of the National Council for Teacher Education Act (for short 'NCTE Act') there were several people who had obtained their One Year Physical Training Course Certificates, they are now debarred from taking appointment because of the existence of Rule 8(3) of the Rules. It is submitted that Rule 8(3) of the Rules provides that the persons who are Matriculate or equivalent and prior to coming into force of the NCTE Act have passed from a recognized Training College / University Two Years Teacher Training / B.Ed. / B.P.Ed. as also those who have certificates of Two Years shall be considered. The grievance of the petitioners is that when they applied for appointment on the post of Physical Education Block Teacher under Naubatpur Block they were selected but at the stage of issuance of appointment letter they were not provided the same. It is submitted that prior to coming into force of the NCTE Act the Physical Training Course was of One Year all over India including Bihar and, therefore, in this situation the rules cannot be framed so as to debar the candidates who have obtained Physical Training Certificates by undergoing One Year Course.

3. On the other hand, it is the case of the respondents that the petitioner cannot maintain the present Writ Application because earlier when they were refused appointment they had moved the



District Teachers Appointment Authority, Patna and on dismissal of their appeal they had further moved this Court in CWJC No. 15309 of 2011 which was dismissed on 20.03.2012. It is submitted that the order passed in CWJC No. 15309 of 2011 was challenged in LPA No. 118 of 2014 which was also dismissed on 08.04.2016. Learned counsel also submitted that in exercise of its power under Article 226 of the Constitution of India this Court may not like to issue directions for the amendments in a piece of subordinate legislation.

4. Having gone through the materials available on record and after hearing the parties we are of the considered opinion that firstly it is the matter of policy decision of the government which has been incorporated in the rules whereunder Two Years Course Certificate in Physical Education has been prescribed as the requirement for purpose of Physical Education Teacher, this Court would not interfere with the legislative functions or the executive functions where it is not found to be arbitrary or against the larger public interest and against the public policy.

5. The petitioners are said to have availed their remedy in the earlier round of proceedings as has been stated in the Counter Affidavit on behalf of the respondents, therefore, in our considered opinion, the petitioners cannot be allowed to agitate the same issue in the garb of a different relief which has an ultimate effect of reopening



/ reviewing the judgment passed by the learned Writ Court and the Appellate Court in the earlier round of proceedings.

6. In result we find no merit in the Writ Application. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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