

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.407 of 2014

IN

Civil Writ Jurisdiction Case No. 19111 of 2013

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Ajay Kumar Yadav Son Of Shri Bharat Yadav, Resident Of Village- Bari Khajuri,
P.O.- Khajuri, Police Station- Kuchaikot, District- Gopalganj, At Present Panchayat
Teacher In Newly Created Govt. Primary School Buchiya Jai Ram Das Ke Tola,
Anchal Sidhwalia, District- Gopalganj

.... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government Of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Magistrate, Gopalganj
5. The Deputy Development Commissioner-Cum-Chairman, District Education
Establishment Committee, Gopalganj
6. The District Education Officer, Gopalganj
7. The District Programme Officer (Establishment), Gopalganj
8. The Block Development Officer, Sidhwalia, District- Gopalganj
9. The Block Education Officer, Sidhwalia, District- Gopalganj
10. The Mukhiya Of Gram Panchayat Raj Bucheya, Block- Sidhwalia, District-
Gopalganj
11. The Panchayat Secretary Of Gram Panchayat Raj Bucheya, Block- Sidhwalia,
District- Gopalganj
12. The Member, District Teacher'S Employment Appellate Authority, Gopalganj
13. Navin Kumar Singh Son Of Awadhesh Kumar Singh, Resident Of Village-
Kabirpur Ujjain Tola, P.O.- Sidhwalia, Police Station- Mahammadpur, District-
Gopalganj
14. Kumar Ravi Shekhar Son Of Rajendra Prasad Singh, Resident Of Village-
Mahmadpur Pandey Tola, Block- Sidhwalia, District- Gopalganj

.... Respondent/s

with

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Letters Patent Appeal No. 730 of 2015

IN

Civil Writ Jurisdiction Case No. 6452 of 2014

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1. Sunita Kumari. W/o Om Prakash Prasad. R/o Village + P.O.- Binahi, Block -
Bhitha, District - West Champaran at Bettiah.
 2. Sunita Devi. W/o Srikant Ray. R/o Village - Jamunia, P.O.- Binahi, Block -
Bhitha, District - West Champaran at Bettiah.
 3. Babita Ray. W/o Awadh Kishor Ray. R/O Village - Gularia, P.O.- Khaira Tola,
Block - Bhitha, District - West Champaran at Bettiah.
 4. Nagendra Kumar Yadav. S/o Late Sita Ram Yadav. R/o Village - Dihi Pakri,
P.O.- Machhaha, Block - Bhitha, District - West Champaran at Bettiah.
 5. Dhananjay Kumar. S/o Chandi Prasad Jayswal. R/o Village - Dhihi Pakri, P.O.-
Machhaha, Block - Bhitha, District - West Champaran at Bettiah.
 6. Ram Prakash Barati. S/o Late Pahari Ram. R/o Village - Dhihi Pakri, P.O.-
Machhaha, Block - Bhitha, District - West Champaran at Bettiah.
 7. Ramakant Prasad Gupta. S/o Ghanshyam Gupta. R/o Village - Balua, P.O.-
Machhaha, Block - Bhitha, District - West Champaran at Bettiah.
 8. Rabindra Kushwaha. Son of Late Gopichand Kushwaha. Resident of Village -
Dhihi Pakri, P.O.- Machhaha, Block - Bhitha, District - West Champaran at Bettiah.
 9. Ramakant Ram. S/o Late Aklu Ram. R/o Village - Jamuara, P.O.- Binani, Block



- Bhitha, District - West Champaran.

10. Ramakant Prasad Kusawaha. S/o Raghunath Prasad. R/o Village - Rupahi, P.O.-
Binahi, Block - Bhitha, District - West Champaran at Bettiah.

.... Appellant/s

Versus

1. The State of Bihar.

2. The Principal Secretary, Education Department, Government of Bihar, Patna.

3. The District Education Officer, West Champaran at Bettiah.

4. The District Programme Officer (Establishment), West Champaran at Bettiah.

5. Sail Ray. W/o Jai Prasad Ray. R/O Village - Gularia, P.O.- Khaira Tola, Block -
Bhitha, District - West Champaran at Bettiah.

6. Heera Lal Kushwaha. S/o Neur Prasad Kusawaha. R/o Village - Murgawa, P.O.-
Madhubani, Block - Bhitha, District - West Champaran at Bettiah.

.... Respondent/s

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Appearance :

(In LPA No.407 of 2014)

For the Appellant/s : Mr. Umesh Kumar Mishra, Advocate

For the State : Mr. Vivek Anand Amitesh, AC to SC-28

For the Respondent no.13 & 14 : Mr. Jitendra Kr. Srivastava, Advocate

(In LPA No.730 of 2015)

For the Appellant/s : Mr. S.B.K. Manglam, Advocate

Mr. Bhagwati Prasad, Advocate

For the Respondent/s : Mr. Ashok Kumar Dubey, AC to AAG-11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 17-01-2018

Both the letters patent appeal involves common question of fact and law and as such with the consent of the parties, the same have been heard together and are being disposed of by this common judgment.

2. In LPA No. 407 of 2014 the appellant was appointed after amendment in Bihar Panchayat Teachers Appointment Rules, 2006 (hereinafter referred to as Rules 2006) whereas the appointment of the appellants in LPA No. 730 of 2015 is prior to amendment in the year 2008.

3. The appellants in both the letters patent appeal were



appointed as general teachers having qualification of Uttar Madhyama from Sampurnanad Sanskrit University, Varanasi whereas in LPA No. 730 of 2015 the appellant nos. 2, 3 and 10 were initially appointed as Siksha Mitra on 26.5.2005. The appellant No.4 was appointed as Siksha Mitra on 30.1.2003. The appellants nos. 5 and 6 the Siksha Mitra on 25.5.2005 and were absorbed as Panchayat Shikshak by virtue of operation in rule whereas appellant no.8 was appointed as Panchayat Shikshak on 24.12.2006. Appellant no.1 was initially appointed as Panchayat Shikshak on 24.12.2006.

4. At the relevant time when the appellants of LPA No. 730 of 2015 were appointed there was no inhibition on appointments of general teachers having equivalent qualification of Intermediate i.e. Uttar Madhyama up-Shastri or Maulvi and by way of amendment in the Rule in 2008 the qualification of Maulvi and up-Shastri was excluded for appointment against the general teachers. Their appointments were confined to only Sanskrit and Urdu subject only.

5. The amended provision 2008 was challenged in various writ applications. The Division Bench of this court vide judgment dated 16.01.2009 passed in C.W.J.C. Nos. 15646, 16344 of 2008 held out that discretion of exclusion of Maulvi and Up-Shastri by making amendment in the Rule is not arbitrary. The Division Bench judgment in **Parveez Alam Vs. State of Bihar is reported in (2009) 2 PLJR 213** the relevant part of the judgment of the Division



Bench reads as follows:-

It is not in dispute that persons holding the qualification of Maulvi and Up-Shastri were held eligible and considered for appointment in terms of the aforesaid Rules. However, later the State Government made certain amendments in Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition)(Amendment) Rules, 2006, hereinafter referred as Rules 2006, by Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition)(Amendment) Rule, 2008, hereinafter referred as Rules 2008, and Rule 4 thereof substituted Rule 8(2)(ka) of the Rules 2006 in the following manner:-

Amendment of Section 2 of sub-rule (a) of Rule 8:- Section 2 of subrule (a) of Rule 8 will be submitted by the following – Should be passed higher secondary intermediate or equivalent examination from a school/college /board recognized by the Government but it does not include degree in technical education (Polytechniz, Unani education) physical education, language specific degree (Maulvi, Up-Shastri) and the degree provided by the voluntary institutions (decided by the department) for employment on the post of general teachers”

6. Rule as amended thus, hereinafter referred to as the offending Rule excludes the candidature of all those persons possessing qualification of Up-Shastri and Maulvi, and the



petitioners being rendered ineligible on account thereof, have questioned its constitutional validity. The language of the English version of the Rules is pathetic. It suffers from the inexactitude of language but as Court of law we have ironed out it to understand the real purpose.

7. It is the assertion of the petitioners that for passing the Maulvi examination a candidate had to pass in twelve subjects including main stream subjects like English, Logic, Hindi, Economics etc. and for obtaining the degree of Up-Shastri, a candidate is required to pass in total eight papers including main stream papers like English, History, etc. According to them, the curricula followed for the courses of Maulvi and Up-Shastri are more exhaustive than the Intermediate examination. Accordingly, it has been contended by the petitioners that offending rule is unconstitutional.

16. We are of the opinion that the basic qualification needed for appointment, primarily needs to be decided by rule making authority. While amending Rule 8 of Rules 2006 by Rule 4 of Rules 2008 the State Government in exercise of its rule making power has excluded the qualification of degrees in language, including Up-Shastri or Maulvi. In such situation this Court in exercise of its power judicial review cannot term the same to be arbitrary. The purported similarity in the curriculum of the Intermediate examination and Up-Shasri/Maulvi examination is of no consequence. It is well settled that qualification for appointment is a matter within



the domain of the body, which is competent to make that legislation. Simply because in earlier years persons holding the qualification of Maulvi and Up-Shastri were considered eligible in terms of the rule, later on, the plea that such persons cannot be excluded from consideration by making amendment in the rule in accordance with law does not command us. Here the rules have been amended in accordance with law and the authority conferred with the power making rule has by the offending rule, specifically excluded the qualification of Maulvi and Up-Shastri, rendering persons holding such qualification ineligible. The plea that contents of the teaching of Up-Shastri and Maulvi is the same as that of Intermediate, we are of the opinion that it is not within the scope of judicial review and is a matter of legislative policy.

17. The view which we have taken finds support from a Division Bench judgment of this Court in the case of **Dhirendra Kumar Singh & Ors. vs. State of Bihar & Others** [2008(1)PLJR 583] in which it has been held as follows:-

Whether the rules covering recruitment for any post, in eligibility criterion prescribed for the post must included other equivalent qualification in a matter of legislative policy and not for this Court to decide. Even where rules provided for alternate to main and sub-equivalent qualification to be taken into consideration, the question of considering any qualification is a matter of expert body to decide. Therefore, it is inept for this Court to enter into the



territory and decide upon equivalence. From a plain reading of the provision contained in 1983 rules, it would appear that various teacher' training courses referred therein are training qualification of different grades and cannot by any means be equivalent with each other, a priori, it hardly needs an argument that unless the matter is examined by any expert body, ordinarily, a diploma course is not equivalent for a degree. Likewise a certificate by itself is not equivalent to a degree or diploma in the subject.

Learned counsel for the petitioners had taken pains to explain the content of training of teaching under different training courses for the purpose of impressing upon the Court that there is hardly any distinction between different courses of training imparted to a candidate. We are afraid, this is not the scope for judicial review while examining the validity of legislation providing eligibility criteria. Thus is a matter of legislative policy and it is within the domain of the legislative body as to what should be the policy to provide requisite qualification for offering appointment to the intending incumbent.

6. Again the same issue as to the exclusion of Maulvi and up-Shastri as eligibility for appointment of General Teacher was raised in C.W.J.C. No. 17705 of 2008 and the Division Bench of this court relying upon the judgment in Parveez Alam (Supra) held out that the exclusion of the Maulvi and up-Shastri by way of amendment in Rule 2008 does not suffer from any infirmity the relevant



discussion of the Division Bench in Pratibha Kumari case reads as follows:-

The petitioner has passed Up-Shastri examination considered to equivalent to intermediate examination. She has filed this petition under Article 226 of the Constitution to challenge the constitutional validity of the Government Notification dated 25th August,2008 particularly, Rule 4 of the Bihar Panchayat Prathmik Shikshak (Appointment and Service Condition)(Amendment) Rule, 2008, in so far as the qualifications of “Maulvi” and “Up-Shastri” have been excluded from the required qualification for appointment as Panchayat Teacher.

According to the petitioner the qualification of “Up-Shastri” is considered equivalent to intermediate examination. Prior to the impugned amendment, the candidates possessing the said qualification were considered eligible for appointment as Panchayat Teacher. By the impugned amendment because of specific exclusion of the said qualification of “Maulvi” and “Up-Shastri” the petitioner and such others are deprived of the opportunity of appointment as Panchayat Teacher.

The question of validity of the impugned amendment has been decided by a Bench of this Court in the matter of Parveez Alam & Ors. vs. The State of Bihar & Ors. [2009(2)PLJR 213]. The Bench of this Court has rejected the contention raised by the writ petitioners. It is held “We are of



the opinion that the offending rule does not suffer from any arbitrariness or offends any of the constitutional provision and therefore the challenge made to it fails”.

7. Mr. Umesh Kumar Mishra, learned counsel appearing on behalf of the appellant in LPA No. 407 of 2014 challenged the judgment of the writ court in C.W.J.C. No. 19111 of 2013 dated 25.11.2013 and contended that under the Rules the teachers' qualification of Uttar Madhyama from Sampuranand Sanskrit University recognized by UGC is legal and valid for appointment of Panchayat teacher whereas Mr. Shashi Bhushan Kumar Manglam appearing on behalf of the appellants in LPA No. 730 of 2015 has submitted that in his case the writ court has failed to appreciate the peculiar facts and circumstances of the case in which the appellants were appointed prior to amendment in the Rules. He submitted with reference to unamended Rule of 2006 that the qualification of Madhyama Uttar up-Shastri and Maulvi are valid qualification for appointment not only against the Panchayat teacher in the subject Urdu and Sanskrit but also for appointment against general subject teacher and only by way of amendment in the year 2008 the qualification of Maulvi and up-Shastri and Uttar-Madhyama were excluded for appointment of teachers other than the teachers of Urdu and Sanskrit.

8. Learned counsel appearing on behalf of the State in



LPA No. 730 of 2015 has placed reliance a judgment in LPA No. 1319 of 2016 dated 5.12.2017 and contended that the qualification from Sampurnanand Sanskrit University is only valid for appointment on the post of Sanskrit teachers and not for general teacher whereas Mr. Jitendra Kumar Srivastava learned counsel appearing on behalf of the private respondents placed reliance on the judgment of the Division Bench reported in **(2009)3 PLJR 334** and submitted that the qualification for appointment of Panchayat teacher was amended in 2008 and the appellant in LPA No. 407 of 2014 was appointed subsequent to amendment in 2006 Rules and as such the qualification of Maulvi, up-Shastri and equivalent has been excluded and by virtue of such exclusion the qualification of the appellant from Sampurnanand Sanskrit University is only valid for appointment against the Sanskrit teachers and not for general subject teacher.

9. We have given our anxious consideration to the rival submission of the parties. As discussed hereinabove, the appellant in LPA No. 407 of 2014 was appointed subsequent to amendment in the Rule 2006 i.e. by way of amendment in 2008 and as such their eligibility is to be examined in terms of amended provision of 2008 which was held to be valid by the Division Bench of this court in the judgment reported in **(2009)2 PLJR 213 and (2011)3 PLJR 534** and since the appointment of the appellant in LPA No. 407 of 2014 is contrary to the amended rules which was made applicable with effect



from 2008 and as such we do not find any error in the consideration of the writ court whereby the writ court dismissed the writ petition of appellant in C.W.J.C. No. 407 of 2014.

10. Adverting to the peculiar facts and circumstances of LPA No. 730 of 2015 we find that the exclusion of the Maulvi and up-Shastri and equivalent degree for appointment against general teachers was made with effect from amendment in 2008 and as such the exclusion by way of the amendment in the Rule cannot operate with retrospective effect much less to undo the appointment of the appellants which was made prior to amendment, in as much as most of the appellants were initially appointed as Shiksha Mitra and by virtue of operation of Rule 2006 they were absorbed as Panchayat Shikshak.

11. So far as oral judgment dated 5.12.2017 passed by the Division Bench in LPA No. 1314 of 2016 on which learned counsel for the State has placed reliance in LPA No. 730 of 2015 is concerned, the said oral judgment is not applicable in this LPA No. 730 of 2015 for the reasons that the Division Bench has not considered the effect of amendment in the Rule 2006 in the year 2008 as appointment of the appellant was made prior to the amendment in the Rule. The Division Bench has not discussed the judgment of the earlier Division Bench reported in **(2009) 2 PLJR 213 and (2001) 336** wherein the Division Bench has discussed the applicability and



validity of 2008 amendment, the LPA Court in LPA No. 1314 of 2016 lost sight of crucial issue whether the amendment in 2008 is retrospective or not and as such amendment would undo the appointment made prior to the amendment.

12. It is now well settled that amendment in Rule cannot operate retrospectively to undo the appointment made prior to the amendment in the Rule.

13. In view of the above the judgment in LPA No. 1319 of 2016 is a judgment rendered in complete ignorance of the two Division Bench judgment reported in **(2009)2 213** and **(2011)3 234** as well as crucial facts that amendment was made in the year 2008 which cannot apply to undo the appointment already made.

14. Thus, on consideration of the facts and circumstances, discussed hereinabove, we are of the considered view that the LPA No. 407 of 2014 does not merit any consideration as the appointment was made subsequent to the amendment in the Rules in 2008 and we do not find any error in the consideration of the writ court warranting any interference and as such LPA No. 407 of 2014 is dismissed whereas in the LPA No. 730 of 2015, the appellants were appointed prior to the amendment as Panchayat Shikshak in 2006 by virtue of operation of Rule and appointment in terms of unamended Rule and as such their appointments cannot be nullified by applying the amended rule 2008 and as such the judgment of the writ court in



C.W.J.C. No. 6452 of 2014 dated 19.12.2014 is unsustainable it is accordingly set aside.

15. The LPA No. 730 of 2015 is allowed.

(Rajendra Menon, CJ)

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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