

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8387 of 2017

Arbind Kumar Ram Son of Late Mohar Ram, Resident of Village-Pithouri Takath, P.O.-Paigambarpur, Plice Station-Baniyapur, District-Saran at Chapra, then Block Teacher in Upgrabed Middle School, Suraundha, Block-Baniyapur,, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education Saran, Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra
7. The District Programme Officer, (Establishment),Saran at Chapra.
8. THe Prakhand Pramukh-cum-Chairman, Baniyapur, Block Employment Unit Baniyapur, Saran at Chapra,
9. The Block Development Officer-cum-Secretary, Block Employment Unit Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit Baniyapur, Saran at Chapra
11. The Block Education Officer-02-cum-Member, Baniyapur Block Employment Unit Baniyapur Saran at Chapra
12. The Headmaster, Upgraded Middle School, Suraundha, Block-Baniyapur, District-Saran at Chapra.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8395 of 2017

Sushila Kumari Wife of Sri Rajeev Kumar Singh Resident of Village-Dhani Chapra, P.O. & Police Station- Manjhi, District- Saran at Chapra, then Block Teacher in Upgraded Middle School, Basantpur Kanya, Block- Baniyapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education Saran, Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhand Pramukh-cum-Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.



10. The Block Education, Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer-02-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Upgraded Middle School, Basantpur Kanya, Block-Baniyapur, District Saran at Chapra.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 8520 of 2017

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Deepak Kumar Gupta, Son of Late Shyam Lal Prasad, Resident of Mohalla-East Salempur, Shiv Mandir, P.O.- Chapra, Police Station- Chapra Town, District- Saran at Chapra, then Block Teacher in Middle School, Pirauta, Block- Baniapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education Saran, Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhanda Pramukh- cum- Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum- Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum- Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer- 02-cum- Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Middle School, Pirauta, Block- Baniyapur, District- Saran at Chapra.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 8410 of 2017

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Bhriagu Nath Rai Son of Budhi Nath Rai Resident of Village - Narharpur, Police Station - Marhawrah, District - Saran at Chapra, then Block Teacher in Upgraded Middle School, Bhumihara, Block - Baniyapur, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.



4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education, Saran Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhanda Pramukh-cum-Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Upgraded Middle School, Bhumihara, Block - Baniyapur, District - Saran at Chapra.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8460 of 2017

Parag Prasad Tripathi, Son of Yogendra Prasad Tripathi, Resident of Village-Bareja, Police Station- Daudpur, District- Saran at Chapra, then Trained Block Teacher in Middle School, Pithauri, Block- Baniyapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education Saran, Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhanda Pramukh-cum-Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer-02-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Middle School, Pithauri, Block- Baniyapur, District- Saran at Chapra.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8510 of 2017

Sushil Kumar Son of Sri Dilip Prasad Resident of Village & Post - Dhangaraha, Police Station - Baniyapur, District - Saran at Chapra, then



Teacher in Upgraded Middle School Batrauli, Block Baniyapur, District -
Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education, Saran Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhand Pramukh-cum-Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer-02-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Upgraded Middle School, Batrauli, Block - Baniyapur, District - Saran at Chapra.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8754 of 2017

Santosh Kumar Sharma, Son of Shatrughan Prasad Sharma, Resident of Village- Pirauta, Police Station- Baniyapur District- Saran at Chapra, then Block Teacher in Upgraded Middle School, Bangali Patti, Block- Baniyapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary HRD, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Dy. Director, Primary Education, Govt. of Bihar, Patna.
5. The Regional Dy. Director Education Saran, Division, Saran at Chapra.
6. The District Education Officer, Saran at Chapra.
7. The District Programme Officer (Establishment), Saran at Chapra.
8. The Prakhand Pramukh-cum-Chairman, Baniyapur, Block Employment Unit, Baniyapur, Saran at Chapra.
9. The Block Development Officer-cum-Secretary, Block Employment Unit, Baniyapur, Saran at Chapra.
10. The Block Education Officer-cum-Member, Baniyapur Block Employment Unit, Baniyapur, Saran at Chapra.
11. The Block Education Officer-02-cum-Member, Baniyapur Employment Unit, Baniyapur, Saran at Chapra.
12. The Headmaster, Upgraded Middle School, Bangali Patti, Block- Baniyapur, District- Saran at Chapra.



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8387 of 2017)

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate

For the State : Smt.Binita Singh-SC-28
Mr. Sudhanshu Trivedi, Advocate

(In Civil Writ Jurisdiction Case No. 8395 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. Madanjeet Kumar- GP20

(In Civil Writ Jurisdiction Case No. 8520 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Smt. Shilpa Singh- GP12

(In Civil Writ Jurisdiction Case No. 8410 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. Prabhakar Jha-GP27

(In Civil Writ Jurisdiction Case No. 8460 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. Kameshwar Kumar GP-17
Mr. Arvind Kumar, AC to GP-17

(In Civil Writ Jurisdiction Case No. 8510 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. A.R. Pandey- AAG-15

(In Civil Writ Jurisdiction Case No. 8754 of 2017)

For the Petitioner/s : Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. Prabhakar Jha-GP-27

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 08-05-2018 Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the State.

The issue raised in the present batch of writ petitions was also subject-matter of appeal No. 42/2017 and other appeals before the State Appellate Authority. The State Appellate Authority has considered various aspects of the matter and disposed of the appeals. The relevant part of consideration of the State Appellate Authority is quoted below for ready reference:

“After considering the submissions made by the appellants in their memo of appeal and in the supplementary affidavits filed by them,



submissions made by State respondents including the Director, Primary Education, Department of Education, Government of Bihar, arguments made by learned Counsels for the appellants and learned Government Counsel and the impugned orders passed by learned District Authority, West Champaran and learned District Authority, Supaul, I find that the employments have been made under the Employment Rules, 2012. The academic qualification required for teachers of different levels have been prescribed in rules 5, 6 and 7 of the Rules, 2012. Rule 7 provides that the candidates having requisite qualifications prescribed in rule 5, will be employed as graduate level language teachers. Education Department, Government of Bihar issued Guidelines vide notification No.7/ni.3-02/06-429 dated 22-06-2012 for employment of teachers for the employment year 2012-13, in which the academic qualification for applicants of graduate level language teacher (Hindi) is prescribed as Hindi subject studied (pathit) at graduate level. It does not specify whether Hindi subject studied as composition/MIL or as a subsidiary subject or Hons. in Hindi will be the requisite qualification. Even before the clause “Hindi subject studied (pathit) at the graduate level” could be clearly defined and clarified, the process of employment of teachers including graduate level language teachers in Hindi was started with publication of Guidelines, 2012, and



publication of notice by all teacher employment units of the State on 30-07-2012. Perhaps, in course of the process of employment, the employment units experienced difficulty in implementing different clauses of the Guidelines dated 22-06-2012 and raised queries seeking clarification from the Education Department, which issued press Communiqué dated 01-09-2012 clarifying the frequently raised queries made by the employment units and at serial no.3 of the Communiqué, it was clarified that candidates who have studied Hindi subject as composition/MIL in B.A. will not be eligible for making application for employment as graduate level language teacher (Hindi). Learned Counsels for the appellants have argued that the aforesaid clarification issued in the Press Communiqué amended the provision related to the requisite qualification for the post of Graduate level Block teacher (Hindi) and the Rules can be amended only after followings the procedure prescribed for amendment of Rules. It was also argued that even a notification/order under rule 17 of the Employment Rules, 2012 has to be issued with the mention that it is issued under the powers conferred under rule 17. The Guidelines, 2012 issued vide notification dated 22-06-2012 clearly mentions that it has been issued under rule 17. But, no such mention has been made in the press communiqué issued in September 2012. Therefore, it cannot be treated as an order / notification issued



under rule 17. It was further argued that the press communiqué issued in September, 2012 cannot be made applicable retrospectively to the third phase of employment under Guidelines 2012 which was issued in June, 2012 and the process of employment had already been started. It was also argued that some of the appellants had also applied for the post of Graduate level teacher (Social Science), but since the offer came first for the post of Graduate level teacher (Hindi), they joined here. Now, they cannot go back and join as Graduate level teacher (Social Science), because employment process is now closed. Some of the appellants will become overage and will not be eligible to apply for any future employment. Learned Government Counsel has argued that though there is no mention of rule 17 in the Press Communique, it should be deemed to have been issued under rule 17.

Considering the rival arguments, I find that though there is no mention of rule 17 in the Press Communique, perhaps it indicates the intention of the Department. But in such an important sensitive matter, in which legal framework becomes important and in which career of large number of candidates is at stake, intention of the Department is not sufficient to satisfy the requirement of clarity and legality. Further, rule 17 provides that Government can remove difficulty in implementation of the Rules, 2012 by issue of



notification/order. The Press Communique issued by the State Government is neither a notification nor an order. It has not been issued in the proper form of notification/order or even a letter, since it does not bear any official letter number with date. It has not been properly circulated to all the Employment Units either before or after the issue of the Communique. The Press Communique has been issued in daily newspaper, *Prabhat Khabar*. Employment Units and candidates are not expected to read a particular newspaper on a particular day. It does not have legal force and is not legally binding also on the candidates.

Another issue is whether the clarification issued through the Press Communique amounts to amendment in Guidelines, 2012. Dictionary meaning of the word 'pathit' is 'studied' or 'read'. Therefore, the prescribed qualification means Hindi subject studied at Graduate level. It does not specify whether it should be studied as a subsidiary or Hons. subject or as Composition or MIL subject. That is why large number of candidates having Hindi composition at Graduate level have been employed as Graduate level teacher in Hindi in several Employment Units. This is also why repeated queries were made by Employment Units regarding its interpretation. I find that though the Press Communique is in the form of clarification, in effect the Press Communique amounts to amendment in the provision related to academic



qualification in the Guidelines, 2012.

It was argued that after the third phase of employment, the Education Department again issued guidelines vide notification number 1769 dated 24-11-2014 for the next phase of employment of teachers, in which the academic qualification of Graduate level Block teacher in Hindi as laid-down in the Guidelines, 2012 has been retained. Therefore, the appellants who are eligible for employment in the year 2012 remain eligible even in the Guidelines issued in the year 2014, as the clarification issued vide Press Communique has not been incorporated in the Guidelines of the year 2014.

There is also merit in the argument that several candidates who have done graduation in Social Science along with Hindi as Composition/MIL applied both for the post of Graduate level teacher (Hindi) and for Graduate level teacher (Social Science). Since they got first offer as Graduate level teacher (Hindi), they joined here. Now since the process of employment started in the year 2012 has been completed, the appellants cannot go back to claim employment as Graduate level teacher (Social Science). The appellants have not suppressed any fact in their application form and had submitted genuine certificates to the Employment Units and the Employment Units in bonafide exercise of their powers and functions under the Rules, 2012 and Guidelines, 2012, have



employed the appellants on the basis of a reasonable interpretation of the qualification prescribed in Guidelines, 2012 for employment of Graduate level teacher in Hindi. Therefore, the appellants are not in fault at all and there is no deliberate irregularity committed by the Employment Units in employing the appellants. There is no malafide intention either of the appellants or the Employment Units. The argument that some of the appellants have become overage for the subsequent employments also deserve consideration, Education Department could have resolved the issue by issuing a proper notification clarifying/amending the provision regarding the academic qualification for employment of Block level teacher (Hindi) in the Guidelines, 2012 and even in the Guidelines, 2014, widely circulating it among all the Employment Units.

In the view of the above, I find that learned District Appellate Authority, West Champaran and learned District Appellate Authority, Supaul have erred in holding that the appellants were not entitled to be employed a Graduate level teacher in Hindi under Guidelines, 2012 and in upholding the order of termination of their services and disallowing the appeals filed by the appellants.

In the result, the appeals succeed and the impugned order passed by learned District Appellate Authority, Supaul in Appeal No.22/2015 on 23-01-2012 and the impugned order passed by learned



District Appellate Authority, West Champaran on 22-02-2017 in Case No.2/2016, 3/2016,18/2016,20/2016, 25/2016, 30/2016 and 37/2016 and order passed on 09-03-2017 in Appeal Case No.43/2015 are set aside and the Appeal No.42/2017, 57/2017, 58/2017, 69/2017, 70/2017 and 71/2017 are allowed. The State respondents are directed to reinstate the appellants of these appeals on their respective positions from where their services were terminated. The order may be complied within one month from the date of this order.

The appeal is disposed of accordingly.”

The finding of the State Appellate Authority after meticulous examinations of the materials available on the record and consideration of the submissions leaves no room for speculation as to the entitlement of the petitioners for payment and quashing of the termination order.

In the present case the respondents have taken following stand in the counter affidavit in paras 7 to 9 which are quoted below:-

“7. That it is pertinent to mention here that after perusal of Marks-sheet of the petitioner it is crystal clear that the petitioner has passed without any Hindi language. The petitioner shows that he has passed with Hindi language is wrong because Hindi language is compulsory paper not an optional paper



and due to this very reason petitioner is not eligible for Graduate Hindi Teacher and for this very reason the petitioner has been removed from his service after proper enquiry.

8. That it is stated that according to para 4 of the annexure-23 of the writ petition the petitioner at Graduate level has read Hindi for two hundred marks. It is pertinent to mention here that after perusal of marks-sheet it is crystal clear that the petitioner has obtained marks in language composition and that is not criteria for the appointment of Graduate Hindi Teacher according to guideline issued by the Education Department Government of Bihar in the form of frequently asked question as details given at serial no. 3.

A true/photo copy of Guideline annexed herewith and marked as Annexure- A to this counter affidavit.

9. That it is humbly submitted that in view of the facts stated herein above it is crystal clear that the removal of the petitioner is done accordingly to rule and guideline issued by the Education Department, Government of Bihar and thus writ petition is fit to be dismissed at this stage itself.

The objection raised by the respondents in the counter affidavit stands answered by the State Appellate Authority in the discussions made in the order quoted hereinabove.

For the reasons indicated by the State Appellate



Authority, this Court does not find any substance in the stand taken by the respondents in the counter affidavit in paras 7 to 9. The same is, accordingly, rejected.

Considering the totality of the facts of this case, the Court is of the considered view that the order contained in Memo No. 268 dated 15.04.2017 which was passed by the Block Teachers Employment Unit, Baniapur, Saran in its emergent meeting dated 15.04.2017 is unsustainable and the same is hereby quashed.

The respondents are directed to reinstate the petitioners and grant all the consequential benefits to them from the date of decision. The decision in this regard must be taken by the respondents within a period of sixty days from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions, all the writ petitions are allowed.

(Anil Kumar Upadhyay, J)

spandey/-

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