

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10625 of 2014

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Gita Kumari W/o Sri Santosh Kumar Resident of Village Dashrathpur, P.S.
Giriyak, District Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
3. The Director, Secondary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Division.
5. The District Education Officer-cum-District Program Officer, Nalanda.
6. The Head Mistress, Project Girls Inter School, Giriyak, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Mishra, Advocate
		Md. Nurul Hoda, Advocate
For the Respondent/s	:	Mr. Ashok Priyadarshi-GA-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 22-11-2018

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The petitioner is aggrieved by the order dated 6.6.2010 contained in Annexure-7 whereby the case of the petitioner for approval of her services has been rejected on the ground that there is no post vacant in the subject in the project school.

3. Mr. Satish Chandra Mishra, learned counsel for the petitioner drawn attention of this Court to Annexure-6 whereby the respondent Director has granted approval of four teachers including the headmistress of the project school in question. He



submits that in the said project school 9 posts were available under the staffing pattern and the petitioner was appointed in the school within the staffing pattern on the 4th post of teacher. He further submits that the Headmistress of the said school also belonged to Hindi subject and as such while approving the services of the teachers the respondents have wrongly excluded the name of the petitioner notwithstanding the fact that the petitioner was appointed in the school within the staffing pattern. Referring to the precedents he submits that similar issue was also considered by this Court in CWJC No. 17682 of 2010 vide order dated 11.04.2014 (Saroj Ray Vs. The State of Bihar & Ors.) and the Court held out that if there is no dispute that the petitioner falls within the staffing pattern of 9 teachers, she can be accommodated in a different school notwithstanding the fact that headmistress belongs to the same subject.

4. By way of rejoinder to the counter affidavit the petitioner has also placed on record the decision of a Co-ordinate Bench dated 4.5.2010 passed in CWJC No. 3522 of 1995 (Madan Prasad Gupta Vs. State of Bihar & anr.) wherein the court noticing the appointment within sanctioned strength of nine teachers, allowed the writ petition and directed absorption of the teachers. The relevant part of the order is quoted below for ready reference:-



“The objections of the respondents against the take over of the services of the petitioner, as raised in the counter affidavit and in the supplementary counter affidavit, are clearly non est in view of the said judgments of this Court and the Apex Court. In the circumstances, the writ application is allowed. The respondents are directed to consider the case of the petitioner for his absorption in service as a teacher in the said School within the sanctioned strength of 9 teachers and give him all consequential benefits including salary at par with other teachers whose services have been taken over in the School. The orders of absorption as well as consequential benefits in respect of the petitioner shall be passed by the respondents positively within a period of three months from the date of receipt/production of a copy of this order.”

5. In view of the decision of the Co-ordinate Bench of this Court in the case of Madan Prasad Gupta (supra) the respondents have approved his services with all consequential benefits.

6. Considering the fact that similar matter was considered by a Co-ordinate Bench and direction was issued to consider the case of the teachers appointed within the staffing pattern of nine teachers, the Court is left with no option but to allow this writ petition with a direction to the Director, Secondary Education to extend similar benefit to this petitioner in the same



line in which the benefit was extended to said Madan Prasad Gupta and other similarly circumstanced teachers. The order dated 6.6.2010 contained in Annexure-7 is accordingly, quashed. The respondents are directed to take fresh decision in the light of discussions made hereinabove within a maximum period of four months from the date of receipt/production of a copy of this order and extent similar benefit as extended to said Madan Prasad Gupta and other similarly circumstanced teachers.

7. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2018
Transmission Date	NA

