

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12828 of 2010

=====

Sidhnath Kumar S/O Sri Dev Saran Paswan R/O Vill.- Tuturkhi, P.S.- Konch,
Distt.- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Bihar, Patna
3. The District Magistrate, Gaya
4. The District Panchayat Raj Officer, Gaya
5. The District Superintendent Of Education, Gaya
6. The Block Development Officer, Konch, Gaya
7. The Mukhiya, Gram Panchayat Raj Ashlempur, Konch, Distt.- Gaya
8. The Panchayat Secretary, Gram Panchayat Raj Ashlempur, Konch, Distt.-
Gaya

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Raj Shekhar
For the Respondent/s : Mr. Avinash Shekhar, AC to SC-6

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 25-08-2018 On 1.4.2018 this case was directed to be listed after disposal of C.W.J.C. No. 11620 of 2010 which was referred to the Division Bench. The C.W.J.C. No. 11620 of 2010 was disposed of by the Division Bench vide order dated 24.2.2012. Thereafter, the present case was listed for 'Admission' on different dates but unfortunately, no one appeared on behalf of the petitioner to assist the court in deciding the present writ application.

Under the compelling circumstance, today this case has been listed under the heading for 'Dismissal' to provide one more opportunity to the petitioner to assist the court but even



today no one appears on behalf of the petitioner

Under the aforesaid circumstances, the Court is left with no option but to decide the present writ application.

The issue raised in the present writ application is identical to the issue raised in C.W.J.C. No. 11620 of 2010 and that is why this court has passed order dated 4.4.2011 for listing of this case after disposal of C.W.J.C. No. 11620 of 2010. The Division Bench after examination of the concerned rules and the other decision on the point dismissed the writ petition.

The relevant point for consideration of this court in C.W.J.C. No. 11620 of 2010 dated 24.2.2012 reads as follows:-

“5. We were taken through the Rules from which we find that submission to be incorrect. The Rules came into force in 2006 and were subsequently amended in 2008. The relevant amended provision in Rule 4(2) is a prospective provision coming into force with immediate effect and takes care of difficulties which may be faced in filling up reserved posts if applicants having intermediate qualification are not available. For such a situation a provision has been made in 2008 Rules that to meet the exigency even matriculates may be appointed but with a condition that they will have to acquire the required qualification of Intermediate within six years. This Rule does not in any way relate to



earlier appointees on the post of Shiksha Mitra which was existing only prior to Rules of 2006.

6. So far as the issue referred to the Division Bench in the light of judgment in the case of *Indu Devi* is concerned, learned counsel for the State has rightly brought to our notice a Division Bench judgment dated 19.01.2011 in the case of *Bhagwan Mahto V. State of Bihar and Ors.* (CWJC No.7719 of 2010), to which one of us (Shiva Kirti Singh, J) was a party. That Division Bench judgment has overruled the views of the learned Single Judge in the case of *Indu Devi* which was followed in the case reported in 2010(2) PLJR 335 (*Anu Kumari V. The State of Bihar & Ors.*). It was held by the Division Bench that the Circular dated 4.7.2008 cannot be held to be illegal on the ground that benefit of 33 months for acquiring higher qualification of Intermediate to the earlier appointees makes it retrospective. The Division Bench held that such benefits could be conferred retrospectively upon the earlier appointees even by provisions in a circular and only if vested rights were to be adversely affected, it could not have been permissible in law.

7. Learned counsel for the petitioner submits that the decision of the Division Bench in the case of *Bhagwan Mahto V. State of Bihar & Ors.* is not a correct decision. However, we are not a correct decision. However, we are not persuaded to take a different view and hence



following that judgment, this writ petition is dismissed.

8. We find that the petitioner had failed to acquire the higher educational qualification within the extended period allowed by the employer-State through the Circular dated 04.07.2008. Even on the date when the statutory rules of 2006 came into force, the petitioner did not have be minimum qualification of Intermediate so as to entitle her to continue on the post of Panchayat Teacher. Hence, we find no merit in the writ petition, it is accordingly, dismissed.”

In view of the judgment of the Division Bench in C.W.J.C. No. 11620 of 2010 , the present writ application does not merit any consideration and it is dismissed accordingly.

(Anil Kumar Upadhyay, J)

Ravi/-

U			
---	--	--	--

