

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25784 of 2013

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Bam Bahadur Singh S/O Late Rajeshwar Prasad Singh Resident Of Village
Shahpur, P.S. Goyalpara, District Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director (Primary Education), Patna.
2. The Regional Deputy Director Of Education, Saharsa.
3. The District Education, Madhepura.
4. The District Programme Officer (Establishment), Madhepura.
5. The Blok Education Officer, Goyalpara, Madhepura.
6. Sri Bhartendu Kumar S/O Not Known Assistant Teacher, Upgraded Middle School, Budhma Govt., Madhepura.
7. Sri Vidyanand Jha S/O Not Known Assistant Teacher, Upgraded Middle School, Alam Nagar (South), Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Narayan Yadav, Advocate
For the Respondent/s : Mr. Santosh Chandra Bhaskar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 07-09-2018

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

2. The grievance of the petitioner is non-consideration
of his case for grant of Graduate Trained Scale.

3. Two fold submissions have been made on behalf of
the petitioner. Firstly, the grievance of the petitioner is with respect
to hostile discrimination. Learned counsel for the petitioner
submits that similarly circumstances others, who have improved
their qualification like the petitioner, were granted promotion but
in the case of the petitioner different standard was adopted by the
respondents. Secondly, it is submitted that the service condition



nowhere inhibits improvement of qualification by way of appearing as private candidates and as such in the absence of inhibition, question of obtaining prior permission is totally misconceived.

4. In the counter affidavit respondents have taken objection that the petitioner has improved qualification without prior permission of the competent authority. There is no answer to the contention of the petitioner about the discrimination and grant of such benefit to similarly circumstanced persons.

5. On consideration of the materials available on the record, the Court is of the view that the respondents were not justified in denying the promotion to the petitioner on the ground that the petitioners have not obtained prior permission of the competent authority. In the absence of any statutory rule or instruction that for improvement of qualification prior permission is required, the Court finds substance in the contention of the petitioner that the State cannot adopt two different yardsticks in consideration of case of similarly circumstanced. Such action, per se is discriminatory and violative of Article 14 of the Constitution of India. In addition thereto the litigation policy, 2011 does not permit the State to adopt two different yardsticks. This aspect of



the matter was considered by the Full Bench of this Court in the case reported in 2018 (2) PLJR 929.

6. In view of the fact that similarly circumstanced others have been considered and granted promotion in the Graduate Trained Scale, action of the respondents in adopting different yardstick in relation to the petitioner is also unsustainable. In view of the aforesaid, the order contained in Annexure-5 cannot sustain. It is accordingly, quashed. The respondents are directed to consider the case of the petitioners for grant of Graduate Trained Scale like similarly circumstances others, whose names have been mentioned in the writ petition and who have been granted such promotion although the case of the petitioner stands on similar footing like others mentioned in the writ petition. Final decision with regard to the grant of promotion may be taken by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2018
Transmission Date	

