

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7168 of 2012

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Smt. Ibha Banerjee, Wife of Sri Rabindra Lal Bandapadhaya, Resident of Laxmi Uma Plaza, Block-B, Flat No. 301, East Lohanipur, Kadamkuan, P.S. Kadamkuan, Town and District Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resources and Development Department, Government Of Bihar, Patna
3. The Director, Secondary Education, Human Resources and Development Department, Government of Bihar, Patna
4. The District Education Officer, Patna
5. The Secretary, Rabindra Balika Vidhyalaya, Rajendra Nagar, Road No.2-B, Patna-800016

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate
For the Respondent/s : Mr. Sanjay Prasad, AC to AAG4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 06-07-2018

Heard learned counsel for the petitioner and State.

2. The petitioner is aggrieved by the decision, as contained in Memo No. 538 dated 14.05.2012 (Annexure-A), whereby the Director (Secondary Education), Bihar, Patna rejected the case of the petitioner for approval of service has been rejected saying that the age of the petitioner is 49 years 11 months and as such in exercise of power under Section 18(3)(Kha) of the Bihar Non-Government Secondary School (Taking over Management and Control) Act, 1982.

3. Learned counsel appearing on behalf of petitioner



has drawn the attention to Annexure-5 whereby service of Smt. Bhaswati Bhattacharya was approved notwithstanding the fact that Smt. Bhaswati Bhattacharya was appointed along with this petitioner and was senior in age than this petitioner. Learned counsel further submits that under the provisions of the Act, the Director, Secondary Education is required to take decision on the approval of the services of the teachers appointed in the minority added High School. He submits that in the matter of appointment of Assistant Teacher, there is no maximum age limit prescribed and as such the petitioner cannot be denied approval saying that the petitioner has crossed the age limit prescribed for entry in the service as Assistant Teacher.

4. Referring to the notification of the State Government vide letter no. 196 dated 13.01.1986, learned counsel for the petitioner submits that for appointment of teacher, there was no maximum age limit, the said letter only indicate that after 58 years of age, the salary of teachers was not payable. The relevant part of the notification as contained in Annexure-10 is quoted herein below for ready reference:

“5. शिक्षकों की नियुक्ति के लिए कोई न्यूनतम आयु सीमा (सिवाय इसके कि वे व्यस्क हों) निर्धारित नहीं हैं। अतः वेतन भुगतान हेतु उम्र को कोई बन्धन नहीं होगा। मात्र 58 वर्ष से अधिक उम्र के शिक्षक को वेतन भुगतान नहीं किया जायेगा।”

5. So far as minorities institutions are concerned,



from the Bihar Non-Government Secondary School (Taking over Management and Control) (Amendment) Act, 2011, it is manifest that in case of appointment of or continuance in service of school of any Head Master, Teacher or non-teaching staff beyond 60 years of age, the school will not be entitled to get any grants of such Head Master, Teaching or Non-teaching staff. For ready reference, the relevant part of Annexure-11 is quoted herein below for ready reference:

“(b) (f) In case of appointment of or continuance in service of school of any Head Master, Teacher or non-teaching staff beyond 60 (sixty) years of age, the school will not be entitled to get any grants for such Head Master, Teaching or Non-teaching staff.”

6. In view of the aforesaid, the Court is of the considered view that when the rule does not prescribe for maximum age limit in entry, it is the only age of superannuation prescribed for the purpose of grant of benefit of salary, the respondents are not justified in rejecting the claim of the approval of the services of the petitioner on the ground that petitioner is over age.

7. Accordingly, the order rejecting the approval of the services of the petitioner is quashed. The respondents are directed to take fresh decision in the light of Annexures-10 and 11 within a period of 60 days from the date of receipt/production of a copy of this



order and grant all consequential benefit within a further period of 60 days from the date of such decision.

8. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.07.2018
Transmission Date	

