

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22768 of 2013

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Yogendra Kumar, Son of Harinandan Yadav, Resident of Village Maura- Kabiya, P.S. - Shankarpur, District - Madhepura

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Human Resources Department, New Secretariat, Vikash Bhawan, Bihar, Patna
3. The Director, Secondary Education, Budh Marg, Bihar, Patna
4. District Magistrate, Madhepura
5. District Education Officer, Madhepura
6. District Programme Officer (Secondary Education), Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate

For the Respondent/s : Mr. R. S. Singh, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 30-10-2018

The petitioner has filed the present writ application for a direction to the respondents to regularize his service against sanctioned vacant post of Orderly. The petitioner claims to have been working since 2010.

2. On behalf of the respondents, stand has been taken that there was regular post of Orderly and against that post appointments have been made for accommodating the persons, who have worked under Non-formal Education.

3. Learned counsel for the petitioner submits that the petitioner is regularly working as Night Guard for the last eight years, although he was appointed against the post of Orderly and at the



relevant the petitioner was appointed on the post, the post was sanctioned and available, otherwise the respondents could not have appointed two persons, which is evident from the counter affidavit itself. Learned counsel submits that the action of the respondents in making appointment to accommodate the persons from Non-formal Education and ignoring the case of the petitioner for regularization is illegal and arbitrary.

4. Considering the fact that the petitioner was appointed in 2010. At that point of time vacancy was available. Subsequent filling of the vacancy cannot be a ground to defeat the claim of the petitioner, if otherwise the petitioner is eligible for consideration and grant of benefit of regularization.

5. Accordingly, the writ application is disposed of with a direction to the respondents to consider the case of the petitioner, which is pending consideration at the level of District Education Officer, Madhepura, as would be evident from Annexure-4. The District Education Officer, Madhepura is required to decide the claim of the petitioner objectively. While taking such decision, the District Education Officer, Madhepura is required to consider the principle laid by the Apex Court in the case of **Amarkant Rai vs State Of Bihar & Ors** reported in **(2015) 8 SCC 265**. Final decision in this regard must be taken by the respondents within a period of four



months from the date of receipt/production of a copy of this order.

6. It is needless to state here that the respondents are obliged to make payment of salary for the period the petitioner has actually worked.

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

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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