

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1794 of 2018

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Suraj Kumar Son of Sri Tetar Das Resident of Mohalla- New Amedkar Colony ,
Khadpar (Near Water Tower), P.O.- Mahendru , P.S. - Sultanganj, District- Patna-
800006

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Social Welfare Department, Government of Bihar, Apna Ghar, Punaichak, Patna.
3. Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. Special Secretary, Social Welfare Department, Government of Bihar, Apna Ghar, Punaichak, Patna.
5. Director, Social Security and Disability Directorate, Social Welfare Department, House No. 31-33, Punaichak, Patna.
6. Bihar Staff Selection Commission, P.O. -Veterinary College, Patna- 800014 through its Secretary.
7. The Chairman, Bihar Staff Selection Commission, P.O.- Veterinary College, Patna- 800014
8. Secretary, Bihar Staff Selection Commission, P.O. Veterinary College, Patna- 800014

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Gyanand Roy, Advocate.

For the Respondent/s : Mr. Lalit Kishore, A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018



Petitioner has preferred this Writ Application challenging the validity and vires of Rules 3 and 7 of the Bihar Government Special Schools (Deaf & Dumb and Blind) Teachers Cadre Rules, 2014 (hereinafter referred to as 'the Rules, 2014') framed under the proviso to Article 309 of the Constitution of India.

2. It is the contention of the learned counsel representing the petitioners that Rules 3 and 7 of the Rules, 2014 are ultra vires to Article 14 of the Constitution of India. It is his submission that appointment of teachers in the Government Blind Schools was being initially made in the Matric Trained Pay Scale and the next promotional post was the post of B.A. Trained and then the post of Assistant headmaster and thereafter the post of Headmaster. The qualification and pattern for appointment of Teachers in the Government Blind High School and Middle School as well as Government Deaf & Dumb Middle School was the same as that of the High School and the Middle School, controlled by the Education Department, Government of Bihar. It is also stated that by virtue of a decision taken by the Welfare Department, Govt. of Bihar, the same scale of pay to the Teachers of the Government Blind High School and Middle School controlled by the Welfare Department has been provided as has been given to the Teachers of the Schools of Education Department, Govt. of Bihar.



3. Referring to Rule 3 of the Rules, 2014, which provides for Constitution of Cadre Structure and Classification of Posts and Rule 7 of the Rules, 2014, which lays down the qualifications for appointment, learned counsel for the petitioner submits that the Cadre Structure provided in Rule 3 for Special Middle School and Special High School is entirely different from that of the Schools managed and controlled by the Education Department. According to the Cadre Structure of the Schools controlled by the Education Department, learned counsel submits, the basic grade for appointment is Intermediate Trained and the next promotional post is B.A. Trained and then the post of Assistant Headmaster and Headmaster and whereas in Rule 3 of the Rules, 2014 the post of basic category is the post of Assistant Teacher and the first promotional post is the post of Assistant Principal and the post for second promotion is the post of Principal. It is further submitted that the qualification for appointment on the post of basic cadre has been provided under Rule 7(b) of the Rules, 2014 which prescribes “Pass in Two Years Regular Diploma in Special B. Ed. (Blind / Deaf & Dumb) / Two Years Diploma in Rehabilitation Therapy”.

4. Learned counsel submits that the qualification prescribed is completely vague and ambiguous because the B. Ed. Special Education (Visual Impairment) is known as ‘B. Ed. Special’



whereas D. Ed. Special Education (Visual Impairment) is known as 'D. Ed. Special' and both are having two different courses in the field of Visual Impairment. It is further submitted that Two Years Diploma in Rehabilitation Therapy is not a course or curriculum in the field of Visual Impairment.

5. Learned counsel has sought to challenge the Rule pointing out that Rule 7(c) of the Rules, 2014 prescribes in maximum Six Months Computer Diploma / Certificate Course from recognized institutions which is not at all required for appointment of teachers, teaching general subjects in the aforesaid schools. It is submitted that in the State of Bihar there is no facility of imparting education in the course of Special B. Ed. (Blind / Deaf & Dumb) and the facility of teaching is only in the course of Two Years Diploma Course in Special Education (Visual Impairment), therefore, if the qualifications prescribed in the Rule which talks of Two Years Special B. Ed. (Blind / Deaf & Dumb) Course is allowed to continue in the Rules, 2014 then no candidate from the State of Bihar or studying in the State of Bihar will be able to apply for appointment on the post of Assistant Teacher in basic category in the Government Blind / Deaf & Dumb Schools.

6. After hearing learned counsel for the petitioner we do not find any pleading in the Writ Application enabling us to take a view that Rule 3 and Rule 7 of the Rules, 2014 are ultra vires to



Article 14 of the Constitution of India. The petitioner has raised certain issues with regard to the constitution of a separate cadre for the Special Schools, he is also seeking substitution of the qualifications prescribed under the Rules as, according to him, either such qualifications are not required or the candidates with such qualifications would not be available in the State of Bihar, we fail to understand as to how the Rules 2014 may be held *ultra vires* to Article 14 of the Constitution on these grounds alone.

7. In our considered opinion, the Cadre Rules, 2014 framed by the Government in exercise of its power under the proviso to Article 309 of the Constitution of India has been framed for regulating the recruitment and conditions of service of the teachers of the Government (Deaf & Dumb & Blind) Special Schools and as the Rules itself says the Schools are in the nature of Special Schools. It is apparent on the face of the Notification No. 2281 dated 19.05.2014 as contained in Annexure-P/1 to the Writ Application.

8. Learned counsel for the petitioner is unable to demonstrate as to how such Rules, particularly Rules 3 and 7 which are under challenge and sought to be *ultra vires* to Article 14 of the Constitution of India, discriminate against similarly situated persons. It is not in dispute that the Government has powers within its domain to frame such Rules, creating a separate cadre for the teachers of



Special Schools. The qualifications prescribed under the Rules have been provided and if the Government in its wisdom has laid down certain qualifications for appointment, there is no reason why this Court would take upon itself the power to lay down the qualification for appointment of candidates in such Special Schools.

9. The Writ Application is devoid of merits. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.04.2018
Transmission Date	N/A

