

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18227 of 2017

1. Md. Rizwan and Ors son of Md. Nasiruddin, Resident of Village- Asnahan, P.S.- Sanhoula, District- Bhagalpur, presently working as Asstt. Teacher 'Physics' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.
2. Md. Atiqur Rahman, son of Md. Fazlur Rahman, Resident of Village- Birbalpur, P.S.- Ghogha, District- Banka, presently working as Asstt. Teacher 'Urdu' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.
3. Abdul Jabbar, son of Abdul Shakoor, Resident of Village- Mahesh Tikeri, P.S.- Basant Rai, District- Godda, presently working as Asstt. Teacher 'History' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.
4. Md. Abdur Razzaque, son of Md. Sultan Ahmad, Resident of Village- Bishanpur, P.S.- Dhoraiya, District- Banka, presently working as Asstt. Teacher 'Geography' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.
5. Aisha Parween, D/o Md. Mahmood Alam, R/o- Asanamadpur, P.S.- Kotwali, District- Town, Bhagalpur, presently working as Asstt. Teacher in 'Botany' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.
6. Rakesh Kumar, D/o Ghanshyam Khadgaha, Resident of Village- Denwara, P.S.- Punsia, District- Banka, presently working as Asstt. Teacher 'English' in 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, District- Banka.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, New Secretariat, Baily Road, P
3. The Director Secondary Human Resources Department, Govt. of Bihar, Patna, New Secretariat Baily Roa
4. The Deputy Secretary Human Resources Department, New Secretariat, Govt. of Bihar, Baily Road, Patna
5. The District Education Officer, Banka, District- Banka.
6. The Secretary, Managing Committee of 2, Azad High School Minority, Bishanpur, P.S.- Dhoraiya, Dis

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Md. Anisur Rahman
For the Respondent/s : Smt.Shilpa Singh -Ga12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY



ORAL ORDER

5 10-07-2019 Heard learned counsel for the petitioners and the counsel appearing on behalf of the State.

Petitioners are aggrieved by the order passed by the Director, Secondary Education contained in Memo No. 1322 dated 27.11.2017.

The case of the petitioners for approval of their service in Azad High School was rejected by the Director on the ground that appointment was made during 16.9.2010 to 15.3.2011 when there was ban on appointment.

This issue is no more res integra. This Court has occasion to decide the similar issue in C.W.J.C. No. 10999 of 2013, the Court considering the case of similarly circumstanced teachers of minority institution categorically held out that minority institutions are free to appoint teachers their institution subject to the condition that teachers fulfill the eligibility for appointment. There is no whisper in the order contained in Annexure-18 that petitioners lacks eligibility and qualification for appointment. The reference of ban is not applicable in the case of minority institutions. The minority institutions have the right to appoint teachers subject to the condition that teachers are only admissible within the sanction strength and teachers have eligibility for appointment.



Annexure-18 nowhere indicates that the teachers appointed in the institution are beyond the sanction strength and teachers including the petitioners lacks eligibility and qualification for appointment.

Under the aforesaid circumstances, the order contained in Annexure-18 cannot sustain. The writ application is allowed. The order contained Annexure-18 is quashed.

The respondents are directed to take fresh decision with regard to grant of approval of the petitioners within a maximum period of four months from the date of receipt/production of a copy of this order.

While taking decision, the respondent Director is required to examine whether the petitioners have requisite qualification and whether they have been appointed within the sanction strength or not?

With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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