

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4594 of 2017

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Savindra Kumar S/o- Bhikham Prasad Sahu R/o Village- Hajiyapur, Ward No. 9, P.O.- Gopalganj, P.s.- Gopalganj, District- Gopalganj, At Present Posted as Assistant Teacher at D.A.V. Middle School, Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Education Department, Government of Bihar, New Secretariat, Distri
3. The District Education Officer, District- Gopalganj.
4. The District Program Officer Establishment, District- Gopalganj.
5. The District Accounts officer, District- Gopalganj.
6. The Block Education Officer, Block- Gopalganj, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha
For the Respondent/s : Mr. Amit Bhushan- GP-17

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 17-10-2019 Heard learned counsel for the petitioner and the

learned counsel for the |State.

2. Petitioner is aggrieved by the order of the Director, Primary Education contained in letter dated 27.2.2017 and the follow up order of the District Programme Officer, Gopalganj contained in letter no. 675 dated 6.3.2017.

3. The petitioner was appointed as Assistant Teacher in the D.A.V. Middle School, Gopalganj in the matric trained scale and later on he was granted revised pay scale. Subsequently, the Director, Primary Education vide Annexure-14 issued direction to the District Education



Officer, Gopalganj for cancellation of the approval of the service of the petitioner granted vide letter no. 3113 dated 10.11.2011. As follow up the letter of the Director, Primary Education dated 27.2.2017 the District Education Officer also issued letter on 6.3.2017 whereby approval of the service of the petitioner has been cancelled and direction was issued for recovery of payment made to the petitioner in one go.

4. Learned counsel for the petitioner submits that the institution in question is a minority institution, after following the procedure of selection consistent with Article 14 and 16 of the Constitution, the petitioner was appointed. The petitioner has necessary qualification and he was appointed against vacant post. He submits that the action of the respondents in cancelling the approval and consequently cancelling the appointment of the petitioner is illegal and arbitrary as well as without jurisdiction. He submits that State can only prescribe qualification for appointment of teacher in minority institution. It has no direct control in the matter of appointment of teacher against sanctioned post and as such entire exercise by the Director Primary Education and follow up order of District Education Officer is nullity and without jurisdiction.



5. Since the petitioner was appointment after advertisement in Newspaper, and following the selection process and he has necessary qualification for appointment as Assistant Teacher, the Court finds substance in the submission of Mr. Purushottam Kumar Jha, learned counsel for the petitioner that respondents cannot in any manner interfere with affairs of the minority institution in the matter of appointment except laying down the minimum educational qualification for appointment. The State can only object if the appointment is beyond sanction strength as the right under Article 29 and 30 of the Constitution to establish minority institution and maintain the same under and it has been held out in numerous cases by the Constitution Bench and the larger bench of the Apex Court as cherished right and it has been reiterated time and again that right to administer institution of its real right of minorities and not illusionary. Appointment of teachers within sanctioned strength in the minority institution is exclusive domain of the minority Institution.

6. Learned counsel submits that similar issue was considered by this Court in C.W.J.C. No. 10990 of 2013 and this Court has taken note of the right of minority institution to



demonstrate the institution includes appointment of teacher against sanctioned vacant post.

7. Considering the submission advanced on behalf of the petitioner, the Court is of the view that the appointment of the petitioner cannot be faulted and therefore, the action of the respondents in cancelling the approval and appointment of the petitioner is unsustainable.

8. In view of the discussions hereinabove including the decision of the Court in C.W.J.C. No. 10990 of 2013 dated 20.11.2018, the Court is inclined to allow this writ petition in order to maintain consistency. So far as payment of salary is concerned to that effect, the respondents shall take appropriate decision in the light of the circular of the State Government vide memo no. 679 dated 14.4.2016. However, the respondents shall not take steps for recovery of any amount already paid to the petitioner.

9. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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