

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16531 of 2019

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Shipra Paul Roy W/o Suman Datta Resident of Village- Larkania Tola,
Katihar, P.s.- Katihar, Distt.- Katihar, at present resident of village- Barmasia,
P.s.- Katihar, Distt.- Katihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Govt. of Bihar, Vikash Bhawan, Patna
2. The Additional Chief Secretary Department of Education, Govt. of Bihar, Vikash Bhawan, Patna
3. The Director Primary Education, Govt. of Bihar, Vikash Bhawan, Patna
4. The District Education Officer Katihar
5. The District Education Officer Kishanganj
6. The District Programme Officer (Establishment) Katihar
7. The District Programme Officer (Establishment) Kishanganj

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Samir Kumar (Sc16)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 16-08-2019 Heard learned counsel for the petitioner and the

counsel appearing on behalf of the State.

Petitioner is aggrieved by the eligibility condition
incorporated viced notification dated 5.7.2019 for appointment
of Bangla Teacher.

Learned counsel for the petitioner submits that
examination for Bangla paper is held for 50 marks whereas
eligibility condition incorporated under notification dated



5.7.2019 requires passing of examination of 100 marks, incorporating such condition is patently without application of mind.

This Court has occasion to decide similar issue in C.W.J.C. No. 33661 of 2016 vide oral judgment dated 27.3.2018. The relevant part of the order is quoted below:-

From the counter affidavit, it appears that when the respondents realized that in the subject of Urdu at the Intermediate level examinations are held only for 50 marks, they have amended the eligibility criteria vide Annexure-2, the notification dated 23.01.2014 and in the subject Urdu, they have made a corresponding correction considering the fact that in the subject Urdu at Intermediate level, the examinations are held only for 50 marks, but unfortunately for the subject Bangla where the situation is identical, no corresponding correction was made by the respondents while fixing the eligibility criteria.

Mr. Dubey submits that the reason behind submits that the reason behind relaxing the requirement for appointment of Urdu teacher is also applicable to Bangla and Sanskrit and as such the respondents cannot adopt two different yardsticks in the matter of fixation of eligibility criteria for appointment of teachers.



Mr. Dubey with reference to the stand taken by the respondents submits that there is no justification to treat the eligibility criteria differently for the teachers, for the subject Bangla, as in the case of Bangla also examination at the intermediate level are held for only 50 marks and in that view of the matter adopting two different yardstick for Urdu and Bangla appears to be unreasonable and arbitrary. He submits that the eligibility criteria have to be read in a manner that it is made workable. Referring to the examination pattern prescribed by the Intermediate Education Council and the Bihar School Examination Board he submits that at the intermediate level examination in Urdu and Bangla examination are held only for 50 marks and as such while fixing the eligibility criteria, the respondents cannot adopt two different yardstick and at the same time adopt criterion, which is impossible, as in the absence of examination for 100 marks in the intermediate at Bangla fixing such qualification would amount to prescribing qualification of passing in intermediate examination in Bangla with 100 marks, which is impossible to answer and otherwise it will to amount prescribing condition to favour out side the candidates examination of inter level are held for 100 marks. In the State of Bihar the examination at



the intermediate level in Bangla is only held for 50 marks and as such the decision on the part of the respondents does not satisfy the requirement of Articles 14 and 16 of the Constitution.

Considering the submissions advanced by the parties and looking at the condition incorporated in Annexure-2, the Court is of the considered view that when the intermediate examination is held for only 50 marks prescribing requirement of passing intermediate with Bangla in 100 marks amounts to a condition impossible to fulfill.

Mr. Dubey has pointed out that in the year 2013 when the respondents have directed the examinations of TET at that point of time they have prescribed eligibility of intermediate with 50 marks in the subject of Bangla.

In view of the above, the Court is constrained to read down the eligibility condition contained in Annexure-2 so far as Bangla teachers are concerned to mean 50 marks at the intermediate level by following the principles of reading down in view of law laid down by the Apex Court in the case of Delhi Transport Corporation vs D.T.C. Mazdoor Congress, reported in AIR 1991 SC 101. The respondents are hereby directed to consider the case of the candidates for Bangla teachers, with the eligibility of 50 marks at the intermediate



level until curriculum is modified by the Intermediate Council or Bihar School Examination Board and examinations are held for 100 marks at intermediate level.

In view of the above, the writ petition stands disposed of.

Let a copy of this order be communicated to the Additional Chief Secretary cum Principal Secretary of the Education Department so that appropriate decision may be taken by the Education Department after application of mind to obviate unnecessary litigation of non consideration of the candidature for appointment of Bangla teacher.

(Anil Kumar Upadhyay, J)

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