

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.24093 of 2019**

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1. Alok Aanand S/o Rajesh Kumar Singh Resident of Mohalla- I.G. Colony, Opposite L.N. Mishra College, Bhagwanpur, P.O. Head Post Office Muzaffarpur, P.s.- Muzaffarpur Sadar, District- Muzaffarpur, presently working as Block Teacher, Middle School, Basudeo, Anchal- Runnisaidpur, District- Sitamarhi
2. Suman Kumar Mishra S/o Late Abhiram Mishra Resident of village- Gangwara Bujurg, P.O.- Balirgah, P.s.- Runnisaidpur, District- Sitamarhi, presently working as Block Teacher, Middle School, Gangwara Tola, Anchal- Runnisaidpur, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Education Department, Govt. of Bihar, Patna
3. The Director Primary Education, Education Department, Govt. of Bihar, Patna
4. The District Education Officer Sitamarhi, District- Sitamarhi
5. The District Programme Officer (Establishment) Sitamarhi, District- Sitamarhi
6. The Block Development Officer Runnisaidpur, District- Sitamarhi
7. The Block Education Officer Runnisaidpur, District- Sitamarhi
8. The Headmaster Middle School, Basudeo, Anchal- Runnisaidpur, District- Sitamarhi
9. The Headmaster Middle School, Gangwara Tola, Anchal- Runnisaidpur, District- Sitamarhi

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. S.B.K. Mangalam, Advocate<br>Ms. Anita Kumari, Advocate |
| For the Respondent/s | : | Mr. Ashutosh Ranjan Pandey (AG 15)                          |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 14-01-2020**

Counter affidavit has been filed during the course  
of argument.

Let it be taken on record.



Heard Mr. S.B.K. Mangalam, learned advocate for the petitioners and Mr. Ashutosh Ranjan Pandey, learned AAG for the State.

The petitioners were appointed on compassionate ground on the post of Block Teacher with a condition that the basic/necessary qualification if lacking at the time of induction in service, shall be acquired by them within a period of six years. Later by making amendments in the Right to Free Education to Children, such a time limit for acquiring the necessary qualification has been lessened to four years.

The petitioners have approached this Court in some urgency because of a communication issued by the Director, Primary Education to all the District Education Officers of the State of Bihar on 22.10.2019 whereby an instruction has been issued that any of the appointees who have not acquired the basic qualification attached to the post, process be initiated for their removal. This communication, though had not been acted upon in its



entirety but the petitioners felt the sting of the same as the current salary to them was withheld but without any order to that effect.

It would be relevant here to note that the petitioners were appointed as non-trained teachers on compassionate ground.

Learned advocate appearing for the petitioners has primarily raised two grounds against such communication. It has been submitted that once an appointment has been given to a person with certain conditions, the same cannot be varied, abrogated or modified to the disadvantage of the appointee. Secondly, it has been urged that the petitioners ought to have been provided training by the employer or the petitioners ought to have been clearly communicated that such up-gradation *viz.* acquiring the basic qualification shall be done at their own level. Not resorting to either of these options available to the employer, a decision to oust them from service is



not in consonance with the principles of service jurisprudence.

As opposed to the aforesaid contention and on the asking of the Court, a supplementary affidavit on behalf of the Government has been filed in which it has been stated that in the event of an inductee in service requiring an up-gradation, the responsibility lies with the employer for giving such training. However, this requirements would not be applicable in case of petitioners as their appointment *per se* is illegal.

In support of the aforesaid contention, it has been urged on behalf of the State by Mr. Ashutosh Ranjan Pandey, learned AAG that on several occasions, this Court as well as the Apex Court have held that any appointment *de hors* the rules or in derogation of the principles of appointment, which includes a person possessing basic/minimum qualification, the whole appointment process gets vitiated and it is no appointment in the eyes of law.



There can be no quarrel with the aforesaid proposition even in the broadest general terms of semantics and legality. However, what the deponent in the supplementary affidavit has conveniently forgotten to remind himself of is that in a situation when a person/inductee/employee is sought to be removed, there are certain accepted/known do's and don'ts before embarking upon such a step. There can be no selective application of a rule and it has also to be seen as to under what circumstances, such appointment was made.

In the present case a communication has been made by the Director, Primary Education to all the District Education Officers of the State to proceed further for removing such persons from service who do not have the basic qualification. This obviously would lead to an inference that persons who have acquired the qualification within the specified time would not be removed. If this be the motive and the procedure adopted by the Education Department, then it would be difficult to accept and digest



the proposition advanced in the supplementary counter affidavit that an appointment which is against the rules *i.e.* appointing such persons is a nullity in the eyes of law and no such appointment exists in tangible form.

A conundrum has been put forth in the counter affidavit which has to be resolved/solved by the State only. The petitioners are sought to be removed from service, not for their appointment being bad in the first instance but for their not having acquired the basic qualification, which they were permitted to do within a particular time. There cannot be a multi pronged procedure for removal of a person from service.

All these aspects need to be revisited before any decision is taken to divest the petitioners of their opportunity of earning their livelihood which has been given to them on compassionate ground.

The issue with respect to respecting the condition stipulated at the time of appointment is also a matter



which need to be taken into account while passing a final order.

As noted above, the proposition advanced on behalf of the State that an illegal appointments carved or creates no right for such appointee, cannot be faulted with. However, the implementation of such principle and policy cannot be unguided and left it to be so. One of the rules of law in modern society is that any decision of the Government has to be an informed one and should be uniformly applied to people, but subject to the classificatory test under Article 14 of the Constitution.

Under the aforesaid circumstances, this Court deems it expedient to direct the petitioners to make a representation to the Principal Secretary, Education (respondent no. 2), annexing a copy of this order along with the communication which has been challenged in the present petition and seek a clarification in the matter.

This shall be done within a period of two weeks of passing of this order. On receipt of such representation,



the concerned respondent (respondent no. 2) shall look into the matter in a holistic manner and shall pass necessary orders in accordance with law within a period of eight weeks thereafter, keeping in mind the principles listed above.

In the meantime, the salary of the petitioners shall be resumed, if not resumed already.

With the aforesaid direction/observation, the writ petition is disposed of.

**(Ashutosh Kumar, J)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
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