

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9636 of 2018

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Rajendra Kumar son of Ramjee Prasad Yadav, resident of Village- Markahi,
P.S. Murliganj, District- Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary. Education Department, Govt. of Bihar, Patna.
3. The District Magistrate, District Purnia.
4. The District Education Officer, District Purnia.
5. The District Programme Officer, District- Purnia.
6. The District Teachers Employment Appellate Authority, District Purnia.
7. The Block Education Officer, Block Barhara, Kothi, District- Purnia.
8. The Block Development Officer, Block- Barhara, District- Purnia.
9. Pramukh Panchayat Samittee, Barhara Kothi, District Purnia.
10. State Appellate Authority Education Department Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arun Kumar, Adv.
For the Respondent/s : Mr. S.C. Mishra- Sc16

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 23-08-2022 The petitioner by way of this writ petition assails the

order passed by the District Appellate Authority and State

Appellate Authority dated 14.08.2013 and 12.01.2018

respectively.

Learned counsel for the petitioner submits that the

case of the petitioner was not considered properly in the facts of

the circumstances of the case by both the forums. It is his

submission that the name of the petitioner was shown in the



merit list but appointment order has not been issued. No reason has come forward for not issuing the appointment order. It is submitted that in other district, appointment orders were issued and appointments were given.

The counter affidavit has been filed by the respondents and learned counsel supports the order passed by the authority and points out that the posts which were advertised in the second phase, were not filled in the said district and in the meanwhile, the rules of 2012 came into force. The State Government vide order dated 07.08.2012 directed that the post of teachers of physical education subject which remained vacant in the previous employment years shall be treated to be abolished and no employment of physical teachers subject were to be made.

Keeping in view thereto, the entire process of selection of Block Teacher physical education in Barhara Kothi block in the second phase of employment were cancelled. Thus, no right is created in favour of the petitioner. Even if the name was included in the merit list, the same does not create any right.

I have reflected over the matter and considered the law. Post once abolished, cannot be filled. Even otherwise, it is



exclusive domain of the employer not to fill up the post as well to abolish it. The only aspect is that there should be cogent reasons for the same.

Having noticed the stands of the State Government, it cannot be said that the decision not to fill up the post was unjustified or arbitrary.

In **Shankarsan Dash Vs. Union of India reported in (1991) 3 Supreme Court Cases 47**, the Apex Court has held as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide



for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neeling Shangla v. State of Haryana or Jitendra Kumar v. State of Punjab.

In view thereof, the view taken by the District Appellate Authority as well as the State Appellate Authority does not warrant any interference.

The writ petition is devoid of merit and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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