

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.537 of 2019
In
Civil Writ Jurisdiction Case No.12636 of 2014

1. The State Of Bihar through Principal Secretary Department of Education, New Secretariat, Vikas Bhawan, Patna
2. The Principal Secretary Department of Education, New Secretariat, Vikas Bhawan, Patna
3. The Director (Secondary Education), Education Department, Bihar Secondary Education Office, Buddha Marg, Patna

... .. Appellant/s

Versus

Arun Singh Son of Hari Singh Assistant Teacher posted in Choudhary Ram Prasad Sharma, Project Girls High School, Pandarak, P.S.-Pandarak, District-Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vivek Prasad, GP 7
		Mr. S.K. Upadhyay, AC to Ex GP 8
For the Respondent/s	:	Mr. Ajay Kumar Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-09-2022

The appellant State have questioned the validity of the order of the learned Single Judge dated 01.08.2018 passed in C.W.J.C. No. 12636 of 2014.

2. There is a delay of 241 days in challenging the order of the learned Single Judge. For the reasons stated in the application and affidavit, delay stands condoned.



3. With the consent of the learned counsels for the respective parties, matter is heard.

4. Respondent - *Arun Singh* was appointed as Assistant Teacher in the private educational institution called Choudhary Ram Prasad Sharma Girls High School. The aforesaid institution was taken over by the Government *vide* Letter No. 142 dated 04.02.1989. Staff of the institution like Teachers were also absorbed in the Government provided that they fulfill the conditions imposed in clause IV of the Letter dated 04.02.1989.

5. Respondent - *Arun Singh* was appointed as Assistant Teacher in the Geography subject. He is also qualified as Physical Education Teacher (Trained Teacher). On the other hand, he is Untrained Teacher in the Geography subject. In this backdrop, question for consideration is whether respondent - *Arun Singh* is entitled to be absorbed in the State Government in terms of Letter No. 142 dated 04.02.1989 or not?

6. Learned counsel for the appellant State submitted that the respondent - *Arun Singh* is not qualified to be appointed as a Geography Assistant Teacher in the Geography subject as he do not possess Trained Teacher qualification. It is also submitted that if the respondent - *Arun Singh* claim is under Physical Education Teacher, in that event even though he is Trained Teacher in



Physical Education subject, however, there were no sanctioned post under the Physical Education Teacher post. Therefore, the respondent - *Arun Singh* is not entitled. The aforesaid issue is not appreciated by the learned Single Judge while passing order.

7. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that similarly situated person who was identically placed, his services have been absorbed. Therefore, there is a discrimination meted out by the State appellant in not regularizing the services of the respondent - *Arun Singh* in the post of Assistant Teacher (Physical Education – Trained Teacher).

8. Heard learned counsels for the respective parties.

9. Respondent - *Arun Singh* was appointed as Assistant Teacher in the Choudhary Ram Prasad Sharma Girls High School. The aforesaid institution was taken over by the Government *vide* Letter No. 142 dated 04.02.1989. One of the clause which is required to be examined in the present matter is clause IV. Clause IV reads as under:

"(iv) शिक्षकों की मान्यता के लिए न्यूनतम योग्यता स्नातक प्रशिक्षित की होगी और स्नातक स्तर पर उनके द्वारा लिए गये एक विषय ऐसा जरूर होना चाहिए जिसका जिक्र उपयुक्त मानक मंडल में किया गया है। महिला हरिजन, आदिवासी के कोटि में प्रशिक्षित अभ्यर्थी नहीं होने पर अप्रशिक्षित महिला, हरिजन एवं आदिवासी को भी सेवा की मान्यता अप्रशिक्षित स्नातक के वेतनमान / वृत्तिका पर दी जायगी। इन्हें अपने खर्च



पर नियुक्ति के तीन वर्ष के भीतर प्रशिक्षित होना होगा और प्रशिक्षण की व्यवस्था राज्य सरकार करायेगी।"

10. The State Government has evolved a policy decision that such of those Assistant Teachers who were to be appointed or absorbed, they must fulfill the requisite qualification by the Trained department. In the present case the respondent - *Arun Singh* who was stated to have been appointed as Assistant Teacher in the Geography subject and he is Untrained Teacher in the Geography subject. On the other hand, if he is Trained Teacher in the Physical Education post that does not means that he is entitled to be absorbed in the post of Assistant Teacher (Physical Education – Trained Teacher) unless and until the aforesaid post is sanctioned. The respondent could not apprise this Court that there is a sanctioned post of Assistant Teacher (Physical Education – Trained Teacher). On the other hand, the Director (Secondary Education), Department of Education, Secondary Education Office, Patna *Mr. Manoj Kumar* who is present in the Court pursuant to the earlier order has apprised this Court that there is no post of Assistant Teacher (Physical Education – Trained Teacher) as on 04.02.1989. These material information have not been taken note off or appreciated by the learned Single Judge.

11. Accordingly, order of learned Single Judge dated 01.08.2018 passed in C.W.J.C. No.12636 of 2014 stands set aside



and writ application C.W.J.C. No. 12636 of 2014 stands dismissed, reserving liberty to the respondent - *Arun Singh* to file review petition in L.P.A. No. 537 of 2019 in the event of having concrete material information that there is a sanctioned post of Assistant Teacher (Physical Education – Trained Teacher) as on 04.02.1989.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
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