

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15932 of 2021

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1. Md. Murtaza Ansari Son of Md. Naushad Ali Ansari Resident of Village-Nima Post Office-Nima, P.S.-Manihari District-Katihar.
 2. Md. Iftekhhar Ali Ansari Son of Md. Riyasat Hussain Ansari, Resident of Village-Haji Tola, Nima , Post Office-Nima, Police Station-Manihari, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, katihar, District-katihar.
5. The District Programme Officer (Establishment), Katihar.
6. The Block Development officer, Brirampur Cum Secretary, Prakhand Teacher Appointment Committee, Balrampur, Katihar.
7. The Block education Officer, Balrampur.
8. The Prakhand Pramukh Cum Chairman Prakhand Teachers Appointment Committee, Balrampur, Katihar.
9. The Mumber, District Teachers Employment Appellate Authority, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jibendra Mishra, Adv.
For the Respondent/s : Mr. Amit Bhushan, AC to GP-17

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 17-08-2022 Heard the parties.

The petitioners pray that they should be considered for appointment against the posts which were advertised way back in the year 2008 and also pray for quashing the letter dated 17.04.2015 issued by the Director, Primary Education, whereby verification was issued to the extent that unfilled posts of the



year 2008 shall not be filled up as now recruitment is to be governed by the rules of 2012.

Learned counsel for the petitioners submits that the vacancies were issued in the year 2008 and the concerned rules applicable to the said posts were the rules of 2008. The authorities therefore could not have passed a direction not to fill the post under the rules of 2008. Learned counsel relies on the judgment passed by this court in C.W.J.C. No.15718 of 2019 dated 18.10.2019, in support of his submission, wherein it was directed to consider the case of the petitioners therein in terms of the rules which was prevailing at the time of vacancies notified.

In the opinion of this Court, posts may remain unfilled for one reason or the other. There can be circumstances, where the exercise under an advertisement may not be completed or may not be initiated itself. The employer has an absolute right not to fill up the post. It is only when certain number of posts are filled and remaining are left vacant without giving any reason, that a right may accrue to a candidate, who had participated in the selection process. The Supreme Court Constituent Bench Judgment passed in *Shankarsan Dash Vs. Union of India*, reported in (1991) 3 SCC 47 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, Neelima Shangla V. State of Haryana, or Jatendra Kumar V. State of Punjab.”

In view of above, the decision taken by the respondents in not filling up the posts advertised in the year 2008 on account that long time has passed and the rules of 2012 have come into force cannot be treated as unjustified. It is admitted position that the selection process under 2008 rules was not completed. Thus, no case of discrimination is made out.

After coming into force of the rules of 2012, the



qualification required for appointment as a teacher has changed while under 2008 rules, a person possess intermediate qualification was eligible while under 2012 rules a candidate must possess qualification of having completed teachers training as per the N.C.T.E. norms.

Right of employment is not available under the constitution and it is only the right of consideration for employment which has been recognized as a facet of article 21 of constitution of India.

Keeping in view above, respondents cannot be directed to conduct selection process and complete the same under the advertisement issued way back in the year 2008.

The writ petition is misconceived and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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