

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17023 of 2018

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Kedar Mochi son of Late Chanchal Mochi, resident of Village- Atrauli, P.O.- Dhakjari, P.S.- Arer, District- Madhubani, at present working as Assistant Teacher in scale of graduation at Middle School, Parkauli, Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director, Darbhanga Division, Darbhanga.
5. The District Education Officer, Madhubani, District- Madhubani.
6. The District Programme Officer Establishment, Madhubani, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. V.N.P. Sinha, Sr. Adv. Mr. Sanjay Kumar Singh, Adv.
For the Respondent/s	:	Mr. Madhaw Pd. Yadaw- GP-23

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL ORDER

2 13-09-2022

1. Heard the parties.

2. The petitioner has preferred the writ petition, assailing the action of the respondents in not considering the candidature of the petitioner for promotion to the post of Headmaster.

3. Learned Senior counsel for the petitioner submits that the denial of consideration is based on flimsy grounds. The petitioner has been denied consideration on the ground that he has acquired graduation qualification along with undergoing training in the same session. Thus, it is alleged that two courses



were overlapping each other and the petitioner has acquired two qualifications, which cannot be allowed. Resultantly, while the petitioner was appointed in the year 1989 and was granted First Time Bound Promotion on 05.07.2000 and was also granted graduation pay scale vide order dated 28.06.2012, he was deprived of consideration for promotion to the post of Headmaster. Objections were raised with regard to his acquiring graduate qualification with two year B.Ed training.

4. Learned counsel submits that the petitioner had passed his graduation as a private student. He was already appointed in service in the year 1989 and after seeking permission from higher authorities was granted leave to appear for the examinations. He was not a regular student and has to be treated to have appeared as an open student. Learned counsel relies on a clarification issued by the Education Department dated 01.12.2020, whereby it has been clarified that *“A student enrolled in a degree programme under regular mode may be allowed to pursue a maximum of one additional degree programme simultaneously under open/distance mode from the same or a different university.”*

5. Learned counsel further submits that the petitioner's qualification of graduate has already been



recognized by the respondents and the graduate pay scale was granted to him in 2012 and the same therefore cannot be ignored for the purpose of considering him for promotion to the post of Headmaster.

6. Per contra, learned counsel appearing for the State submits that the petitioner was appointed in the year 1989 considering his qualification of having passed the matriculation examination as well as having obtained training. After he had joined, he was granted permission to appear in the examination for graduate but the said qualification of graduation cannot be treated to be recognized for the purpose of considering his case for promotion to the post of Headmaster as the qualification of graduation overlaps with the period during which the petitioner has acquired the training. It is pointed out that the petitioner has acquired training in the session 1986-1988, while he has completed his graduation from 1987 to 1989. Thus, two simultaneous courses have been pursued by the petitioner which cannot be allowed to be considered. Learned counsel submits that even though the petitioner may have been granted graduate pay scale, the same would not be a ground to consider him for promotion to the post of Headmaster as illegality cannot be allowed to be perpetuated.



7. I have considered the submissions.

8. It is an admitted position that the petitioner was appointed based on the training which he acquired for the period 1986 to 1988 along with his qualification of Inter. So far as the question of having passed graduation is concerned, it is on record that the respondents allowed him to appear in the examination and the sanction was granted to him to complete his graduation. No objection was raised at that time with regard to the question of overlapping. It is also noticed that the petitioner was granted the First Time Bound Pay Scale as Matric trained and Second Time Bound Pay Scale of graduate trained. It is at the stage when the petitioner was to be considered for promotion to the post of Headmaster that the objection of having overlapping degrees have been taken. From the record, it is also noticed that the petitioner had also done Post Graduation. Thus, the educational authorities have not derecognized his graduation qualification, which have been considered for the purpose of allowing him to do Post Graduation.

9. Keeping in view above, the objection of the respondents, is found to be wholly without basis and frivolous. It is mainly because if overlapping was to be objected, the petitioner could not have been offered appointment based on the



training which overlaps with the graduation qualification. Secondly, the petitioner was granted permission to appear in the graduation examination and at that time also no such objection was raised. Thirdly, when he completed his Post Graduation that time too no objection was raised by the respondents. The concerned University authorities have also not objected to the petitioner's appearing and completing his graduation as a private candidate. The action of the respondents, therefore, in raising an objection at the time of promotion to the post of Headmaster is found to be unjustified and without any purpose and therefore frivolous. The respondents have also not shown any rule which debar overlapping qualification of degree and training.

10. The contention of the learned counsel for the petitioner is found to be buttressed by the clarification issued by the Education Department itself on 01.12.2020, where a person enrolled in degree programme holder is allowed to simultaneously pursue another course by open/distance mode. The petitioner having appeared in the graduation examination as a private candidate has to be treated akin to a person pursuing an open/distance mode course. No exception therefore can be made to such qualification acquired by the petitioner and the same has



to be considered as duly acquired qualification for the purpose of future career of the petitioner and such candidate.

11. In view of above, this writ petition is allowed.

12. The respondents are directed to treat the petitioner eligible for consideration for promotion for the post of Headmaster. If during the pendency of this writ petition, candidature of other candidates has been considered ignoring that of petitioner, his case shall be reviewed and if otherwise found suitable, the respondents are directed to promote him from the date similarly situated junior persons have been so promoted with all consequential benefit of pay fixation etc.

13. The exercise in this regard shall be conducted and completed within a period of four months.

(Sanjeev Prakash Sharma, J)

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Item no.28

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