

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3655 of 2019

1. Munni Kumari, Wife of Raj Kumar Bhuiya Resident of Village- Parta, P.S.- Amba, District- Aurangabad
2. Bachan Bhuiya @ Bachchan Bhuiya, Son of Thegu Bhuiya Resident of Village- Parta, P.S.- Amba, District- Aurangabad
3. Rajeshwar Ram, Son of Late Nathuni Ram Resident of Village- Dhundha, P.S.- Amba, District- Aurangabad
4. Narayan Bhuiya, Son of Late Gopal Bhuiya Resident of Village- Gelayi, P.S.- Amba, District- Aurangabad

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Education Department, Patna, Bihar
2. The Secretary, Jan Shiksha, Education Department, Patna, Bihar
3. The Director, Jan Shiksha, Education Department, Bihar, Patna
4. The State Project Director, Bihar Education Project Council, Beltron Bhawan, Shastri Nagar, Patna
5. The District Magistrate, Aurangabad
6. The District Education Officer, Aurangabad
7. The District Program Officer, Aurangabad
8. The District Program Officer, Madhyamik Shiksha Shaksharta and R.M.S.A., Aurangabad
9. The Block Education Officer of Kutumba, Aurangabad
10. The Block Development Officer, Kutumba, Aurangabad

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Arvind Kumar, Advocate
For the State	:	Ms. Namrata Singh, AC to GA-12
For the Council	:	Mr. Girijesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 17-07-2023 Heard learned counsel for the petitioners and learned counsel for the State as also learned counsel for the Bihar Education Project Council (hereinafter referred to as the ‘Council’) (respondent no. 4).

2. The petitioners in the present case are seeking to



challenge the order of termination of the petitioners as Tola Sevak on the ground that they have their educational qualification of Madhyama from Bihar Sanskrit Shiksha Board and the same was not a valid qualification for appointment of Tola Sevak.

3. It appears from the statements made in the writ application that the respondents did not issue the termination letters but stopped the petitioners from discharging their duties as Tola Sevak in their respective schools. The petitioners, therefore, have prayed for issuance of Writ in the nature of a Writ of Mandamus directing the respondents to produce termination letter and also to pay the arrears of salary of the petitioners which is due with the respondents from 2013 till now.

4. It is the case of the petitioners that in the year 2007-08 vacancies were notified through advertisement calling for suitable candidates for the post of Tola Sevak. The petitioners applied for the post of Voluntary Tola Sevak in Kutumba block of Aurangabad and after following the procedures on this behalf, the petitioners got their appointment letter for the post of Voluntary Tola Sevak. A copy of the appointment letter has been enclosed as Annexure '1' to the writ application.



5. It is the further case of the petitioners that they were sent on training and after completion of their training, they were allowed to join. Petitioner nos. 1 to 3 were allowed to join on 21.01.2010 whereas petitioner no. 4 joined on 23.01.2010. It is the case of the petitioners that they were discharging their duties as Tola Sevak without any hindrance but their payment has not been made and when the petitioners moved this Court for their arrears of salary in CWJC No. 1884 of 2013, a direction was issued vide order dated 27.03.2014 whereafter the petitioners have been paid. Annexure '8' to the writ application is the copy of the order passed by this Court in CWJC No. 1884 of 2013.

6. It is submitted that the engagement of the petitioners has been terminated from their post without any notice or show cause and till now, no termination letter has been given to the petitioners.

7. A counter affidavit has been filed on behalf of respondent no. 8. The District Programme Officer, Literacy, Aurangabad has submitted that in view of the order dated 27.03.2014 passed by this Court in CWJC No. 1884 of 2013, the State Project Director, Bihar Shiksha Pariyojna Parishad, Bihar Patna has passed a detail order in terms of Annexure 'R8/A'. It



is submitted that in view of the said order, the then District Programme Officer (Literacy), Aurangabad has communicated the same to the District Public Grievance Officer, Aurangabad vide letter no. camp 01 dated 29.06.2017 and clarified the matter to the petitioners. It is his stand that the petitioners were aware of the records and the matter, hence, the writ application be dismissed.

8. Learned counsel for the petitioners has placed before this Court a copy of the judgment dated 15.02.2023 passed in CWJC No. 17667 of 2021 (**Abhishek Kumar Aman and Others versus The State of Bihar and Others**) to submit that in an identical case, this Court has been pleased to quash the order passed by the respondents and restored the petitioners in the said writ application with all consequential benefits. It is submitted that the case of these petitioners is identically situated with that of **Abhishek Kumar Aman** (supra), hence, they are entitled for the same.

9. Having heard learned counsel for the petitioners and the State as also upon perusal of the records, this Court finds that there is no denial of the fact that these petitioners were appointed/engaged as Tola Sevak in the year 2009-10. The Annexures 'R8/A' and 'R8/B' enclosed with the counter



affidavit provide identical reasons for dispensing with the engagement of the Tola Sevak which were subject matters of consideration by this Court in CWJC No. 17667 of 2021.

10. This Court, therefore, finds that the question framed by the learned Writ Court in CWJC No. 17667 of 2021 and the judgment of the Court in the said case would equally govern the case of these petitioners. The relevant paragraphs ‘6’ to ‘10’ of the judgment dated 15.02.2023 passed in CWJC No. 17667 of 2021 are being reproduced hereunder for a ready reference:-

“6. The question arises whether a person who has been selected prior to issuance of those clarifications can be said to have been illegally appointed if he was Madhyama qualified and not matric as interpreted by the respondents.

7. In the opinion of this Court, any person who is matric or equivalent is entitled to participate in the selection process where the minimum qualification required is matric. Equivalence is not required to be made specifically for the purpose. It is an admitted position that the qualification of Madhyama has been acquired from the Bihar Sanskrit Education Board which is governed by the rules and regulations laid down by the Government of Bihar. A person having acquired the said qualification therefore cannot be deprived of participating in a selection process where the minimum qualification required is matric. It appears that there may have been some confusion and some persons may have been denied participation on the ground of their having equivalent qualifications to matric and, therefore, the clarification was issued by the then Director on 23.12.2013. However, it would not in any



manner mean that those who were appointed prior to 2013, on the basis of qualification of Madhyama, would be treated as unqualified for the purpose of continuing in employment. There was no occasion to remove such Tola Sewaks.

8. Although this Court notices that after 2013, Tola Sewaks possessing the qualification of Madhyama have been appointed, discrimination cannot be drawn between such Tola Sewaks possessing Madhyama qualification and appointed after 2012 and those Tola Sewaks like the petitioners who were appointed prior to 2012 based on the same qualification. The very candidates, who possessed the same qualification, in the same year, may be appointed in different years, namely, some may have been appointed in 2009, 2010, and 2011 and some may have been appointed in 2012, 2013, and onwards. No distinction can be drawn amongst them. The action of the respondents is, thus, in violation of Article 14 of the Constitution of India. The interpretation taken by the Director vide his letter dated 17.09.2020 and implemented by the respondents vide their orders impugned dated 15th June 2021 and subsequent orders dated 26th July 2021 and 6.9.2021, therefore, stands vitiated in law.

9. Accordingly, the orders passed by the respondents dated 15th June 2021, 26th of July, 2021 and 06th of September, 2021 based on the letter dated 17.09.2020 issued by the Director are quashed and set aside without consequential benefits.

10. The petitioners shall be restored to the original place of posting with all consequential benefits. The implementation shall be done within three months.”

11. This Court has been informed that the judgment of this Court in CWJC No. 17667 of 2021 has attained finality. In the aforesaid view of the matter, this writ application is allowed.



The decision of the respondent authorities in respect of these petitioners would also be governed by the same reasoning and rationale which have been provided in the judgment dated 15.02.2023 in CWJC No. 17667 of 2021. The petitioners are also found entitled for the reliefs which have been granted to those petitioners.

12. Let the respondents take appropriate steps to place the petitioners at appropriate places and pay the consequential benefits within a period of three months from today.

(Rajeev Ranjan Prasad, J)

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