

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9087 of 2022

=====

Zainab Firdaus D/o Late Md. Shakil, resident of Village/Mohalla - Molnadih,
P.O.- Molnadih, P.S.- Chhabilapur, District- Nalanda, State - Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Bihar, Patna.
2. The Secretary, National Institute of Open Schooling, under Ministry of Human Resources Department, Government of India, New Delhi.
3. The Chairman, National Institute of Open Schooling, under Ministry of Human Resources Department, Government of India, New Delhi.
4. The Director, National Institute of Open Schooling, Regional Office Bihar, Patna.
5. The Joint Director, National Institute of Open Schooling, Regional Office Bihar, Patna.
6. The District Education Officer, Jehanabad.
7. The District Programme Officer (Establishment), Jehanabad.
8. The Block Education Officer cum Co-Ordinator NIOS, Study Centre, BRC, Makhdumpur, Jehanabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Jitendra Kumar, Adv.
For the State	:	Mr.Madhaw Prasad Yadaw (Gp 23) with Mrs. Mina Singh, GP-22
For the U.O.I.	:	Mr. Anshuman Singh, Adv.
For the N.I.OS	:	Mr. Manoj Kumar Singh, Adv.

=====

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

ORAL ORDER

3 09-01-2023

1. Heard the parties.

2. Keeping in view, the observations made by this
Court in C.W.J.C. No. 16214 of 2019 (**Md. Ataur Rahman &
Ors. Vrs. The Union of India & Ors.**) and Analogous Cases,
(**Category ‘B’**), dated 19.10.2022, the writ petition is dismissed
in the following terms:-



“Category-A

01. Heard the parties.

02. Out of the petitioners present before this Court in the aforesaid bunch of writ petitions some are those who have been appointed as untrained teachers on compassionate ground (C.W.J.C. No.8984/2020) and others are those who have been appointed as untrained teachers by the concerned panchayat. All these teachers were asked to complete their training within a period of six years. For the reason that before 30.03.2019 they did not clear the course, or that they had improved their ranking, their services were sought to be terminated. However, all of them have passed Dl.Ed course from N.I.O.S. conducted by the State Government after 31.03.2019. It is also informed that few of the petitioners have acquired training of B.Ed/Dl.Ed from other recognized institutions after 31.03.2019. In order to reduce the voluminousity of the judgment, individual facts of each and every petitioners are not being mentioned. However, keeping view of the common facts mentioned in each writ petitions as above they are being generally noticed in the present order.

03. All the petitioners are aggrieved of the general orders passed by



the Director, Elementary Education dated 22.10.2019, whereby in terms of the directions issued by the Union of India referring to Section 23(2) of the Right to Education Act, has directed for obtaining information relating to termination of service of such teachers, who did not acquire their training qualification up to 31.03.2019. By individual orders, some of the petitioners have been directed to be removed from their post as they have acquired their training after 31.03.2019. Such order has also been challenged by moving I.A. in the respective petitioners.

04. Learned counsels led by Mr. P. N. Shahi, Senior Advocate, have argued that the action of the respondent State is illegal and unjustified. The observations of the Central Government for not allowing teachers, who are untrained as on 01.04.2019 to perform duties, cannot be treated as a direction to terminate the services of the teachers, who have already acquired the training subsequently. Learned Senior counsel appearing for the teachers, who have been appointed on compassionate ground submits that their appointment was made subject to acquiring training within a period of six years. The appointment orders have been issued in the year 2018. Thus,



they could as per their conditions of appointment complete their training within a period of six years from 2018. Their appointments being special category, on compassionate grounds, could not be governed by the provisions of Section 23(2) of the R.T.E. Act so as to terminate their services. Learned counsel submits that since they are all trained, they should be allowed to continue.

05. Per contra, counsels appearing for the State Government, in the respective petitions, have commonly argued that the provisions of R.T.E. are binding on the State Government for the purpose of teaching at the level of elementary schools. Only those teachers were required to be appointed, who were trained as per the original R.T.E Act of Section 23 (2). As a special gesture, the Union of India granted relaxation by adding a proviso to Section 23(2), whereby further four years time from 31.03.2015 was granted to complete the training by making an amendment vide notification dated 09.08.2017.

06. Keeping in view thereto, all these petitioners were required to complete their training up to 31.03.2019. Learned counsel submits that even if the conditions have been mentioned in the appointment



letter, the same cannot give any advantage to the petitioners as any condition contrary to the provision of the Act would not bind the State Government or the Central Government and no benefit can accrued to the petitioners on account of the same. The petitioners, therefore, have no right to continue on the post.

07. I have considered the submissions. It would be relevant to notice the amendment made on 09.08.2017 by which Section 23 of the R.T.E. Act was amended by the notification reads as under :

***“23. Qualifications
for appointment and terms and
conditions of service of
teachers. -***

(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering coursed or training in teacher education, or teachers possessing



minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of



Children to Free and Compulsory Education (Amendment) Act, 2017.]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.”

08. From the aforementioned perusal it is noticed, the amendment Act has come into force with effect from 01.04.2015, although the notification is dated 09.08.2017. Thus, if four years are to be computed, they shall be computed from 01.04.2017 so as to mean that a person must acquire his training as on 31.03.2019 in order to continue as a teacher in the elementary schools.

09. From the facts, which have come on record, none of the teachers who may have been appointed on the basis of orders of the Court or on the basis of compassionate ground or on account of any other reason, acquired qualification of training as on 31.03.2019. Thus on plain reading of the provisions of the Act (supra), no untrained teacher could continue in employment after 31.03.2019.

10. However, the fact remains of



that they all were allowed to remain by the Government of Bihar till it dawned upon them by issuing an order on 22.10.2019, and thereafter, on 30.11.2020 directing for taking steps for removing such untrained teachers.

11. While the action of the State Government is found to be in consonance with the basic concept of the proviso added to section 23(2) of the R.T.E., this Court notices that as on today all of them had acquired the training. In several of the cases, interim orders have been passed protecting their services and it is noticed that they are all working on the post except few where no interim order was passed.

12. In ordinary course, this court would not have interfered with the orders of the State Government directing for terminating the services of the petitioners. However, the petitioners have already acquired the training and they are now eligible to teach students in terms of Section 23(2) of the R.T.E. Act of 2009. Their appointment was made in accordance with law as it existed in State of Bihar by following due process.

13. The purpose of the Act of 2009 is to provide teachers to the primary classes who are all trained. The delay in acquiring the training may have been attributed to the



teachers or on account of delayed sessions by the respective institutions or on account of lack of infrastructures. However, this court would not go into the said aspect but the fact remains that all of them have acquired the training as of now.

14. In the circumstances, while their earlier services rendered with the State Government may not be treated to be a regular one, no purpose at the same time would be served in terminating the services and conducting fresh selection on the same post which will also take a long time, keeping in view that the selection process itself as a long cumbersome process.

15. In order to protect the students, whose education might be affected on account of creating vacancies by terminating services of the teachers, who are already trained, this court considering the fact that the education being a subject matter in the concurrent list and also considering that the State Government has a right to frame its own rules relating to appointment directs that the petitioners shall be allowed to continue on their respective post. However, considering the provision of Section 23(2) of the Act, as amended vide Amendment Act of 2017, all of them shall be treated to be freshly appointed only from the



date they have acquired the training and not from an earlier date as their appointment prior to acquiring training which has been done only after 31.03.2019 was not in conformity with the provisions of the R.T.E. Act of 2009. More so as their continuance in services after 31.03.2019 even by Government was dehors the Act of 2005 and therefore cannot be regularized.

16. Accordingly, it is directed that the petitioners shall be treated as freshly appointed elementary school teachers and their services shall be counted for all purposes from the date they acquired their training. The period of service rendered prior to acquiring training, shall not be counted for any other purpose.

*17. Keeping in view, the law laid down by the Apex Court in the case of **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors. reported in (2009) 3 SCC Page 475** and subsequent judgment in the case of **State of Punjab & Ors Vs. Rafiq Masih & Ors. Reported in (2015) 4 SCC Page 334**. The salary which they have drawn for the said period shall not be recovered.*

18. It is made clear that those who have failed and have not acquired training till date would not be allowed to continue as they are ineligible to teach and



their services shall be terminated in terms of the order of the State Government. As and when they acquire training, they will be free to participate in the subsequent selection which may be conducted by the State Government and considering their part service of the State Government may grant them one time age relaxation.

19. The writ petitions are disposed of accordingly.”

3. Accordingly, the writ petition is allowed.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 14

U			
---	--	--	--

