

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.639 of 2019

In

Civil Writ Jurisdiction Case No.14294 of 2014

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1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
 2. The Principal Secretary Department of Education, Govt. of Bihar, Patna
 3. The Director Secondary Education, Department of Education, Govt. of Bihar, Patna
 4. The District Education Officer Madhepura

... .. Appellant/s

Versus

Shree Narain Yadav Son of Late Kameshwar Yadav Assistant Teacher Project Girls High School, Kumar Khand, Police Station-Kumarkhand, District-Madhepura

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhat Kumar

For the Respondent/s : Mr. Shekhar Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

11 05-04-2023 Mr. Prabhat Kumar, the learned counsel for

the appellant /State has questioned the impugned

judgment especially paragraph -3 thereof dated

25.10.2018 passed in C.W.J.C. No. 14294 of 2014 by



the learned Single Judge.

The issue relates to establishment and identification of project schools for the benefit of girl students.

The school in which the respondent had been serving was one of the selected schools for being taken up as a Project School. As on date, the teaching and non-teaching staff in such schools are being paid by the Government. In this process, a Three Member Committee was constituted to identify such schools which were already existing before the project came into existence. Even with respect to taking over the services of such teachers of the school, certain conditions were put forth specially regarding their academic qualification. It was also decided by the Three Member Committee that any appointment in such school identified as Project School, after 04.02.1989, shall not be considered. Thus, the cut-off date of 04.02.1989 is referable to the date of appointment of such teachers in



the schools which have been taken over as Project Schools.

In paragraph -3 of the impugned judgment, while meeting one of the objections of the State, the learned Singe Judge has said that in terms of letter no. 142 of the Government, the cut-off date is to be read with reference to the selection of the school as a Project School.

Mr. Prabhat Kumar submits that such interpretation is incorrect, specially in view of the letter no. 12/P1-065/87-142 of the Govt. of Bihar in the Human Resources Development Department which has clarified that "the services of only such teachers will be considered for recognition who are currently working and who are appointed by the Managing Committee prior to the date of permission of the establishment or selection by Headquarter or the date of selection by the competent committee at the district level".

From the afore-noted letter, we have also found



out that the scheme of Project Schools was taken up in the year 1984-85 and since the notification regarding the same was issued on 04.02.1989, the same date has been fixed as the cut-off date before which teachers should have been appointed for being considered for being taken over by the Government.

The second objection of the State with respect to the claim of the respondent (writ petitioner) was that the respondent was an appointee beyond the strength for the humanities in the school.

The afore-noted objection of the State was dispelled on the statement made by the writ petitioner that in the school in question, only two teachers in the humanities have been considered whose services have been approved against sanctioned strength of three of such posts. The writ petitioner ought to be considered if at all he qualifies for being considered as a teacher of the Project School.

The learned Single Judge, has held that without



going into the controversy whether the post existed or not, a liberty he granted to the respondent (writ petitioner) to file representation before the Director, Secondary Education who would examine the claim of the writ petitioner and if there existed one post in the humanities and the writ petitioner was senior most teacher for consideration, the Director, Secondary Education would pass appropriate orders with regard to claim of the writ petitioner and in case any person senior to the writ petitioner was available for consideration against the third post in humanity group, the respondent/Director, Secondary Education shall pass appropriate orders rejecting the claim of the writ petitioner. It was further directed that final decision in this regard be taken within a maximum period of four months from the date of receipt / production of a copy of that order.

Armed with the afore-noted judgment, the writ petitioner filed a representation before the Director,



Secondary Education long before but ill date not decision has been taken. It has been urged on behalf of the respondent herein (writ petitioner) that a contempt petition also has been filed vide M.J.C. No. 3434/2019 for non compliance of the judgment passed by the learned Single Judge.

Mr. Prabhat Kumar submits that the Director, Secondary Education is faced with a problem in view of the interpretation of the cut-off date having been given incorrectly in paragraph -3 of the judgment. Precisely for this reason, this L.P.A. is only directed towards the modification of paragraph -3 of the judgment impugned.

From the records, we find that the proper interpretation would be that the cut-off date for consideration would be referable to the date of appointment of such teacher in the identified school and not the identification of such school as Project Schools as has been ordained in paragraph -3 of the judgment.

Paragraph -3 of the impugned judgment is



modified accordingly.

However, we do caution the appellant to abide by the judgment of the learned Single Judge at the earliest, meaning thereby that the representation preferred by the respondent (writ petitioner) ought to be decided, without fail, within a period of four weeks.

The appeal stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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(Harish Kumar, J)

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