

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20546 of 2010

NUTAN SINHA

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20799 of 2010

BINDU DUBEY

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 20546 of 2010)

For the Petitioner/s : Mr. MD. Ataul Haque, Adv.

For the Respondent/s : Mr. Madhaw Prasad Yadaw, GP 23

(In Civil Writ Jurisdiction Case No. 20799 of 2010)

For the Petitioner/s : Mr. MD. Ataul Haque, Adv.

For the Respondent/s : Mr. Madhaw Prasad Yadaw, GP 23

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

56 10-01-2023 1. The present writ petition has come up before the Court as the order passed earlier by this Court dated 20.11.2015 was recalled as an apparent error had crept in the order mentioning therein that the school was a Government aided minority school that apart from the fact, so far as the other question and facts as examined earlier, remained uncontested.

2. This Court, therefore, has heard the matter again after a supplementary counter affidavit has been filed on behalf of the



respondent. In the counter affidavit, the respondent no. 2 has asserted that the writ petitioners were appointed as Assistant Teacher in the year 2006 by the Managing Committee of the Balika Madhya Vidyalya, Dalmianagar, but their salary was not being released and they, therefore, preferred the present writ petition. The school is a non Government aided school.

As per Resolution dated 20th September, 2011, the salary of the teaching and non-teaching employees of the Government aided school was revised in terms of the Sixth Pay. The petitioners' school also containing list of schools included in the Schedule.

3. It is further stated that in the counter affidavit that in the school selections were to be conducted. The Chairman of the Managing Committee vide his letter dated 12.05.2009, requested for approval of service of the teachers who had been appointed after due selection which included the petitioners. The petitioners had been appointed admittedly on 16.09.2006 and were working in imparting education in the school. At the time of approval, the authorities observed that the selection of the petitioners was conducted without following reservation roster and the Managing Committee did not include the representative of the District Superintendent of Education at the time of selection and, therefore, the District Superintendent declined to



accord approval vide his order dated 06.06.2007.

4. Learned counsel for the petitioner submits that it was the responsibility of the departmental representative to remain present in the interview as they were widely published and informed to the authorities as is apparent from the letter sent to the Managing Committee by the Principal.

5. I have considered the submission and find that before making selections, permission was sought from the State Government and clearance was granted for making selections. Advertisement was issued by the Committee and the members of the Selection Committee mention the name of the Government representative also. However, this Court finds that the respondents have not averted to the said aspects which have been mentioned in the letter sent by the Principal seeking approval. It is also noticed that as per the Government letter dated 21.07.1983, if the proposal of appointment is not approved nor rejected within three months, the same shall be treated as automatically approved.

6. Keeping in view that the petitioner was appointed in 2006 and the same was not rejected within period of three months, by operation of the circular dated 21.07.1983, the appointment of the petitioners stood automatically approved.



Be that as it may, even otherwise as held by the Division Bench in case of **L.P.A. No. 1198/2011, State of Bihar vs. Anita Banka decided on 12.09.2013**. The Division Bench has held as under:

“We have perused the record. It is apparent that the District Superintendent of Education was informed about the interview held by the School. A representative of the District Superintendent of Education did attend the interview. It was the duty of the said officer to remain present throughout the interview. If he failed in performing his duty, the appointment of the writ petitioners cannot be vitiated. As to the reservation policy, we do not have to enter into the larger issue whether or not the reservation policy of the State Government would apply in case of minority institutions. As reported by the District Superintendent of Education on 28th August 2009, the appointment of the writ petitioners was made in accordance with law of reservation; the appointment of the writ petitioners could not have been vitiated on the ground of non-observation of the reservation policy either.

It is thus, demonstrated before us that neither of the grounds on which the appointment of the writ petitioners is held to be vitiated is tenable.

In view of the above referred finding recorded by the District Superintendent of Education, Bhagalpur and confirmed by the learned single Judge, no case for interference is made out. Appeal is dismissed in limine.



Interlocutory Application stands disposed of.”

7. Keeping in view the aforesaid observations, the order passed by the respondent dated 06.06.2007 is found to be unjustified and not sustainable in law. The petitioners who have been performing their duties continuously would, therefore, be entitled to continue to perform their duties and also draw salary. The aid in relation to the said post shall be released now forthwith by the respondent State within stipulated period of three months.

8. With the said order, writ petition stand allowed.

(Sanjeev Prakash Sharma, J)

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