

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17667 of 2021

1. Abhishek Kumar Aman, S/o- Sri Prem Chand Chaudhari, R/o- Village- Mamka, P.S.- Pesar, District- Aurangabad.
2. Indu Devi, W/o Sri Kamlesh Rajak, R/o- Village- Bakan, P.S.- Pesar, District- Aurangabad.
3. Rinku Devi, W/o- Sri Nagendra Rajak, R/o- Village- Bakan, P.S.- Pesar, District- Aurangabad.
4. Vishwanath Bhuiya, S/o- Sri Swaroop Bhuiya, R/o- Village- Dhanhara, P.S.- Jamhor, District- Aurangabad.
5. Awadhesh Chaudhary, S/o- Sri Chanarik Chaudhary, R/o- Village- Mamaka, P.S.- Pesar, District- Aurangabad.
6. Kumari Usha, W/o- Sri Surandra Rajak, R/o- Village- Kadokhari, P.S.- Rishiup, District- Aurangabad.
7. Lalkeshwari Devi, W/o Sri Satish Rajbanshi, R/o- Village- Rajabigha, P.S.- Jamhor, District- Aurangabad.
8. Kusum Kumari, W/o Sri Sanjay Kumar Chaudhary, R/o- Village- Dudhar, P.S.- Rishiup, District- Aurangabad.
9. Satyendra Chaudhary, S/o- Sri Dashrath Chaudhary, R/o- Village- Bahuria Bigha, P.S.- Barun, District- Aurangabad.
10. Jag Mohan Chaudhary, S/o- Late Tiwari Chaudhary, R/o- Village- Kapsia, P.S.- Aurangabad, Muffasil, District- Aurangabad.
11. Satyendra Kumar, S/o- Late Maheshwar Ram, R/o- Village- Kosdihara, P.S.- Jamhor, District- Aurangabad.
12. Bhola Chaudhary, S/o- Sri Ramgahan Chaudhary, R/o- Village- Bind Bigha, P.S.- Obera, District- Aurangabad.
13. Pramila Devi, W/o- Shri Akhilesh Kumar, R/o- Vill.- Rajapur, P.S.- Goh, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Joint Secretary Education Department, Government of Bihar, Patna.
3. The Additional Secretary Education Department, Government of Bihar, Patna.
4. The Director Jan Shiksha Bihar, Patna.
5. The Assistant Director Jan Shiksha.
6. The District Magistrate Aurangabad.
7. The District Education Officer District- Aurangabad.



8. The District Programme Officer, (estt.) District- Aurangabad.
9. The District Programme Officer, Shakshtia, Aurangabad.
10. The Block Development Officer Aurangabad, District- Aurangabad.
11. The Block Education Officer Aurangabad, District- Aurangabad.
12. The Block Development Officer Barun, District- Aurangabad.
13. The Block Education Officer Barun, District- Aurangabad.
14. The Block Development Officer Obra, District- Aurangabad.
15. The Block Education Officer Obra, District- Aurangabad.
16. The Block Development Officer Goh, District- Aurangabad.
17. The Block Education Officer Goh, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh, Advocate
For the Respondent/s	:	Mr.Subash Chandra Mishra (SC16)
		Mr. Madhukar Mishra, AC to SC16

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 15-02-2023

The petitioners have preferred this writ petition seeking to quash the order dated 15.06.2021 issued by the District Programme Officer declaring the appointment of the petitioner illegal on the premise that they had acquired the qualification of Madhyama from Bihar Sanskrit Education Board which is equivalent to matriculation but as they were appointed prior to 2012, they cannot be allowed to continue on the post. The petitioners also pray for the quashing of the consequential orders passed on the 26th of July, 2021, and 6th of September, 2021 whereby the petitioners have been removed from the post which they were held continuously from 2009.



2. Learned counsel for the petitioners submits that the qualification of Madhyama from Bihar Sanskrit Education Board is equivalent to that of matriculation. Beyond the records, the state authorities issued an order in 2012, directing the various District Programme Officers to treat the qualification as equal to appoint persons on the post of Tola Sewak. Those who had acquired qualifications prior to 2012 and were appointed as Tola Sewak cannot be said to have been illegally appointed and they cannot be distinguished or discriminated from the candidates who have been appointed after 2012 based on the same qualification.

3. Learned counsel submits that the interpretation taken by the respondent is wholly erroneous as so far as the question of Madhyama being equivalent to that of matriculation was never in dispute even prior to 2012. The petitioners had presented themselves for appointment based on their qualification of Madhyama. They had been appointed from 2009 and were continued as Tola Sewak. The post of Tola Sewak has been made as a substantive post and the persons are being allowed to perform their duties up to the date of attaining superannuation as provided in the Bihar Service Code, i.e. age of 60, cannot be treated different from others who were



appointed under the same scheme and are continuing.

4. *Per contra*, learned counsel appearing for the respondent submits that as per the letter dated 17.09.2020, issued by the Director, Mass Education, it has been laid down that the Tola Sewaks/Shiksha Sewaks were selected by the Bihar Education Project Council before 2012 on basis of qualification of Madhyama from Bihar Sanskrit Education Board shall not be treated as recognized. On the basis of such direction impugned orders were passed. It is submitted that the stand taken by the Director is based on the order dated 23.12.2013 whereby by amendment of educational qualifications words “matric or equivalent qualification” were added. Since the equivalent qualifications were added only after 2013, those appointments made prior to 2013, on the basis of equivalent qualification, would be wrongful and they have to be removed.

5. Having considered the submissions above, this Court finds that prior to 26.01.2013, the Akshar Anchal scheme was being regulated by the Bihar Education Project Council. The said scheme was taken over by the Mass Education Department of the Government of Bihar after 26th of January, 2013. The appointment of Tola Sewak under Akshar Anchal scheme was conducted prior to 2013 by the Bihar Education



Project Council. The minimum qualification required is that the candidate must be matric or a higher qualification. The petitioners had passed Madhyama from Bihar Sanskrit Education Board and were appointed in 2009 and, thereafter, their selection was made on the basis of the qualification of Madhyama which was treated as equal to matriculate by the appointing authorities. Although, there was no such clarification issued in the scheme but the fact remains that the qualification acquired by the petitioners has been treated equal to that of matriculation. Further clarification with regard to the question of equivalence was made by the Director vide his letter dated 23.12.2013.

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 volition 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. Writ petition is allowed. No costs.

(Sanjeev Prakash Sharma, J)

Ashwini/-
Item No. 2

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2023
Transmission Date	NA

