

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11560 of 2019**

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Kumari Prasun D/o Shashi Kant Jha Resident of Village-Begumpur,P.s.  
Khudabandpur,Dist.-Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through, Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Director, Primary Education, Education Department, Govt. of Bihar, Patna
3. The District Magistrate, Katihar
4. The District Planning Officer, At and Dist.-Katihar
5. The Block Development Officer, Ajamnagar,Dist.-Katihar
6. The Block Education Extension Officer, Ajamnagar,At and Dist.-Katihar
7. The Panchyat Secretary, Gram Panchayati Raj, Block Ajamnagar, Katihar At and Dist.-Katihar
8. The Mukhiya, Gram Panchyat Raj Maheshpur, At and Dist.-Katihar
9. Soni Kumari D/o Narendra Singh Resident of Village Singhoul, P.S. Singhoul, Dist.-Begusarai

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr.Rajesh Kumar, Advocate<br>Mr. Mukul Sinha, Advocate                                                                                                                  |
| For the Respondent/s | : | Mr.Madanjeet Kumar ( Gp20 )<br>Ms. Madhubala Kumari, Advocate<br>Mr. Pushkar Narain Shahi, Sr. Advocate<br>Mr. Anjani Parashar, Advocate<br>Ms. Deeksha Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**CAV JUDGMENT**

**Date : 15-03-2024**

1. The petitioner has challenged the order dated 28.02.2019 passed by the State Appellate Authority in Appeal No. 496 of 2018 by which the Appeal filed by the petitioner challenging the order dated 21.02.2015 passed by the District Appellate Authority, Katihar in Appeal Case No. 63 of 2013 has



been dismissed. The petitioner has further prayed for quashing the appointment letter dated 20.03.2007 issued in favour of respondent no. 9 and for a further direction to the respondents authorities to appoint the petitioner in her place as she is above in the merit position than respondent no. 9.

2. The factual matrix of the case is in narrow compass inasmuch on 28.07.2006 an advertisement was published for appointment on the post of Panchayat Teacher in Maheshpur Gram Panchayat, Ajamnagar in the district of Katihar. The petitioner having the qualification of Intermediate applied under unreserved category along with the respondent no. 9. A merit list was prepared on 01.09.2006 in which the petitioner was placed at serial no. 32 whereas the respondent no. 9 was placed at serial no. 33. The date of counselling was fixed on 20.03.2007 but the petitioner was not selected and was informed by the Panchayat Secretary that she was under age by two months by not attaining the minimum age of 18 years with reference to 01.01.2006 for appointment. Accordingly, she was not appointed and the employment unit completed the process of selection by appointing respondent no. 9 on 20.03.2007. The petitioner filed a complaint before the B.D.O., Ajamnagar stating therein that since the appointment was being made in the year 2007 and



accordingly as per Rule 8 (Kha) of the Bihar Panchayat Primary Teachers (Employment & Service Condition) Rules, 2006 [hereinafter referred to as “2006 rules”] the calculation of minimum age of 18 years should be made with reference to the recruitment year 2007 with cut off date as 01.01.2007.

3. However, the complaint filed by the petitioner was dismissed and the petitioner was informed about the same vide notice dated 07/08/2007. The petitioner filed a writ petition bearing C.W.J.C. No. 13458 of 2007. The writ petition was disposed giving liberty to the petitioner to approach the District Appellate Authority within eight weeks. However, the petitioner filed appeal after two years bearing Case No. 63 of 2013. The appeal was heard on merit and the District Appellate Authority vide order dated 21.02.2015 held that as per Rule 8(Kha) of 2006 Rules the candidate must be 18 years of age as on 01.01.2006 which will be relevant date for calculating the minimum age of recruitment. It was also observed that the selection committee is not competent to grant age relaxation and granting age relaxation by the appellate authority will be against the departmental rules.

4. The petitioner again filed a writ petition bearing C.W.J.C. No. 6660 of 2015 challenging the order of District



Appellate Authority which got disposed by order dated 17.07.2018 with liberty to the petitioner to approach the State Appellate Authority. The appeal bearing Case No. 496 of 2018 filed by the petitioner before the State Appellate Authority also got dismissed on 28.02.2019.

5. Mr. Mukul Sinha, learned counsel for the petitioner argued that the minimum age prescribed as per Rule 8(Kha) of the 2006 rules is to be calculated as on 1<sup>st</sup> January of the recruitment year and since recruitment was completed / done in the year 2007, as such, the minimum age of the petitioner was to be calculated as on 01.01.2007 instead of 01.01.2006. It has further been contended that Rule 1(iii) of the 2006 rules states that 2006 rules shall come into effect from 1<sup>st</sup> July, 2006 and as such the relevancy of treating 1<sup>st</sup> January, 2006 for calculating the minimum age does not hold any meaning.

6. It has further been contended that Rule 8 (kha) of the 2006 rules was amended / replaced by another notification with effect from 25.08.2008 clarifying that the relevant date for consideration of minimum age shall be treated as 1<sup>st</sup> August of the recruitment year. The petitioner was not given age relaxation also. He relies upon a judgment of Co-ordinate Bench of this Court in CWJC No. 10661 / 2009 dated 04-05-2012.



7. On the other hand, learned counsel for the State argued that as per original rule 8 (Kha) of the 2006 rules a candidate must be of 18 years of age in the recruitment year as on 01.01.2006. Since the petitioner was underage and on 01.01.2006 she was not completing the minimum age of 18 years accordingly was rightly not appointed. The amended rule 2008 came into force with effect from 25.08.2008 and the recruitment process was completed in 2007 itself, as such, the amended rule shall not be applicable in the present matter.

8. Learned counsel for the respondent no. 9 argued that there is no infirmity in the impugned order. The respondent no. 9 was appointed on 28.03.2007 and has been working for the last 17 years and has also completed training and all. He further contends that the 2006 rules was notified on 01.07.2006 and the advertisement was published on 28-07-2006 hence certainly 2006 rules will apply which says that the age was to be reckoned from 1<sup>st</sup> January of the recruitment year i.e. year of advertisement which comes to 01.01.2006. The employment unit has rightly calculated the age of the petitioner as on 01.01.2006 and found her to be under age.

9. I have heard learned counsel for the parties and perused the relevant rules. The short question which requires



consideration is the applicable date for calculating the minimum age for recruitment. Rule 8(kha) of the 2006 rules prescribes that:-

आयु — जिस वर्ष नियोजन किया जा रहा हो उस वर्ष की पहली जनवरी को उम्मीदवार की न्यूनतम आयु 18 वर्ष एवं अधिकतम आयु 37 वर्ष होगी। अनुसूचित जाति / अनुसूचित जनजाति एवं विकलांग को 5 वर्ष पिछड़ा एवं अत्यंत पिछड़ा वर्ग के लिए 2 वर्ष तथा प्रत्येक कोटि की महिला उम्मीदवार के लिए अधिकतम उम्र सीमा में 3 वर्ष की छूट दी जायेगी।

10. From perusal of the aforesaid rule it is crystal clear that the age of the candidate is to be reckoned with from 1<sup>st</sup> January of the recruitment year i.e. 01.01.2006. Undisputedly the advertisement was published on 28.07.2006 therefore the recruitment year shall be treated as 2006 and not the year in which selection process completed. By operation of the 2006 rules the petitioner was required to be 18 years of age as on 01.01.2006 but in the present matter the petitioner was underage on 01.01.2006 and had not completed 18 years as on 01.01.2006.

11. The amended 2006 rules which came into effect on 25.08.2008 is of no help to the petitioner as selection process was completed in the year 2007 itself and the 2006 rules was amended subsequently in the 2008.

12. The judgment of this Court relied upon by the



petitioner is not applicable in the facts of the present case. No *ratio decidendi* has been determined in the said judgment.

13. Considering the above mentioned facts and the provision of 2006 rules, I am of the considered opinion that recruitment body as well as the appellate authorities have rightly come to the conclusion that the age of the petitioner has to be reckoned as on 01.01.2006 as per rule 8 (kha) of the 2006 rules.

14. It is clarified that recruitment year refers to the year in which vacancy arises and advertisement published and it is not based on the year when appointment process is completed.

15. In the result, the present writ application is dismissed having no merit.

**(Anil Kumar Sinha, J)**

Praful/- AFR

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