

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5943 of 2016

Abdus Sattar Son of late Md. Taskin, resident of Villag-e Sikmi, PS Manjhagarh, Po Gopalganj, District Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Secretary Education, Govt. of Bihar, Patna.
3. The Deputy Director, Secondary Education, Government of Bihar, Patna
4. The District Education Officer, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mohammad Sufyan
For the Respondent/s : Mr. Ravi Bhardwaj, AC to GA 13

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 4 20-04-2024 1. The present writ application has been filed for quashing of the order, dated 03.03.2015, passed by the Deputy Director, Secondary Education, Government of Bihar, Patna, by which the claim of the petitioner for regularization/absorption of his services as Assistant Teacher in Manan Nagina Rai Project Girls High School, Kuchaikot, has been rejected. The petitioner has further prayed for quashing of the order, dated 03.05.2010, passed by the Director, Secondary Education, by which the claim for absorption of the petitioner in Manan Nagina Rai Project Girls High School, Kuchaikot, has been dismissed on the ground that the claim of the



petitioner was not coming under the policy of the State Government and the petitioner had left the Manan Nagina Rai Project Girls High School, Kuchaikot, and got employment in another school, namely, Middle School, Manjhagarh, Gopalganj. The petitioner has also prayed for a direction to the respondent authorities to pay rightful dues of the petitioner with effect from 01.01.1989.

2. The brief facts of the case is that the petitioner applied for the post of Assistant Teacher, pursuant to the advertisement in Manan Nagina Rai Project Girls High School, Kuchaikot. He was selected for appointment, vide letter no. 5, dated 02.10.1980 and joined the said school on 03.10.1980, where, according to the petitioner, he worked till the year 2007. The petitioner was working in the said school as Assistant Teacher, having qualification of B. A. Trained.
3. The Manan Nagina Rai Project Girls High School, Kuchaikot, was taken over as Project School in the Second Phase by the respondent-State in the year 1984-85. The teaching and non-teaching staffs of the Manan Nagina Rai Project Girls High School, Kuchaikot, approached this Court, in CWJC Nos. 7003 of 1995 and



7045 of 1995, seeking direction to the respondents to consider the cases of the petitioners for recommendation/ approval of their appointments in the said Project School by placing their cases before the screening committee. The aforesaid two writ petitions were disposed by order, dated 14.11.1996, with a direction to the respondents to place the cases of the teaching and non-teaching staffs of the Project School before the screening committee and the Committee will decide the cases of each individual employees after taking into account all the relevant factors.

4. Pursuant to the direction of this Court, the screening committee, vide its order, dated 05.04.1997, rejected the claim of the petitioner for regularization/absorption of his service on two grounds that he was having qualification of B. A. Trained and not B. Ed and posts were not available. There were three sanctioned posts and the petitioner's name was at serial no. 4.
5. Aggrieved by his rejection, the petitioner again moved before this Court, in CWJC No. 7020 of 1999, which was disposed by order, dated 10.11.2006, with a direction that the claim of the petitioner shall be governed by the



direction of the Supreme Court, from paragraphs 82 onward, in the case of **the State of Bihar and Others v. Project Uchcha Vidya, Sikshak Sangh and Others**, reported in **(2006) 2 SCC 545**.

6. Thereafter, on 28.02.2007, the petitioner joined another school, namely, Middle School, Manjhagarh, Gopalganj, as Block Teacher (Urdu).
7. The petitioner came to know, in the year 2014 through R.T.I., that for the purpose of regularization/absorption of the services of Assistant Teacher, B. A. Trained degree was considered equivalent to B. Ed. Degree and the services of many teachers were regularized.
8. Learned Counsel for the petitioner submits that after having been properly selected by the Managing Committee of the Project School, in question, with B. A. Trained qualification, the rejection of the claim of the petitioner for regularization/ absorption is arbitrary, illegal and unjust. The petitioner had no knowledge about rejection of his claim by the respondent authorities, vide order, dated 03.05.2010, as no notice in this regard was ever been served upon him. Since B. A. Trained qualification is made equivalent to B. Ed. Qualification,



the name of the petitioner ought to have been considered for regularization/absorption in the Project School in the light of Full Bench decision of this Court and the decision of the Supreme Court.

9. Learned Counsel relies upon the decision of this Court in CWJC No. 7060 of 2011, disposed on 31.01.2012, in which the order, dated 03.05.2010 was quashed with respect to one, namely, Smt. Daya Prasad @ Daya Srivastava and the respondents were directed to ensure that the writ petitioner is paid all her rightful dues from 01.01.1989. The claim of the petitioner was rejected by the same impugned order, dated 03.05.2010.
10. In the light of the aforesaid decision, the present petitioner filed a representation before the Director, Secondary Education, praying for consideration of his claim for regularization/absorption, which was dismissed by order, dated 03.03.2015, on the ground that the petitioner had left his service in the Project School and joined another school, namely, Middle School, Manjhagarh, Gopalganj.
11. On the other hand, learned Counsel for the State submits that the claim of the petitioner for regularization of his



services was rejected earlier due to non-availability of sanctioned post in humanity subject. The petitioner's claim was validly rejected by the authorities inasmuch as in Manan Nagina Rai Project Girls High School, Kuchaikot, services of three teachers, namely, Smt. Vidya Rai, Smt Baby Singh and Smt. Puspa Kumari, had already been approved against the three sanctioned posts in humanity subject and the claim of the petitioner for approval as teacher in the humanity subject is not justified in view of non-availability of the sanctioned post. The petitioner had also left the Project School in the year 2007 and joined Middle School, Manjhagarh, Gopalganj, as Block Teacher (Urdu).

12. After having heard learned Counsel for the parties concerned and after going through the materials available on record, it transpires that the petitioner's case was considered by the screening committee, constituted pursuant to the direction of the Supreme Court, in the case of **Project Uchcha Vidya, Sikshak Sangh** (supra) and the three-member committee did not find the case of the petitioner fit for regularization/ absorption. The petitioner also left the Project School and joined another



school on 28.02.2007.

13. From perusal of the counter affidavit and the impugned order, dated 03.03.2015, it further transpires that there were only three sanctioned posts of humanity teachers, against which three teachers had already been regularized/absorbed.

14. Insofar as the claim of the petitioner for payment of his rightful dues since 01.01.1989 on the basis of the order passed by this Court, in the case of **Smt. Daya Prasad @ Daya Srivastava** (supra) is concerned, in my opinion, the parity claimed by the petitioner with another teacher, namely, Smt. Daya Prasad @ Daya Srivastava is not available inasmuch as the petitioner was never absorbed in the services of the project School; whereas the claim of the writ petitioner, namely, Smt. Daya Prasad @ Daya Srivastava, was rejected on the ground that at the time of her appointment, she was overage and a co-ordinate Bench, relying on another decision of the learned Single Judge, came to the finding that at such a belated stage, the ground of either underage or overage cannot be used as a ploy not to recognize service of the employee in question, as it will be in the teeth of judicial pronouncements,



quashed the order of rejection of recognition of the service of the writ petitioner, namely, Smt. Daya Prasad @ Daya Srivastava, dated 03.05.2010, and directed the respondent authorities to consider for payment of her rightful dues with effect from 01.01.1989.

15. Considering the above discussion, I am of the considered view that the claim of the petitioner for recognition/absorption of his services in Manan Nagina Rai Project Girls High School, Kuchaikot, has rightly been rejected by the respondent authorities. Since services of the petitioner in the Project School has not been absorbed and he was working in another school, the petitioner is also not entitled for any wages and/or salary claimed by him with effect from 01.01.1989.

16. This writ application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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