

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1233 of 2019

In
Civil Writ Jurisdiction Case No.14128 of 2014

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1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
 2. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
 3. The District Education Officer, West Champaran at Bettiah.

... .. Appellants.

Versus

Tapeswar Sah Son of late Ganga Sah Resident of Village- Suarchhap, Police Station- Louriya, District- West Champaran.

... .. Respondent.

Appearance :

For the Appellants-State : Mr. Y.P. Sinha, AAG-7.
For the Respondent : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-11-2024

The appellants-State has assailed the order of the learned Single Judge dated 26.11.2018 passed in C.W.J.C. No.14128 of 2014.

2. Core issue involved in the present lis is whether respondent-Tapeswar Sah fulfill the age criteria of 35 years as and when he joined service read with Section 3(3) of the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, relevant provision extended age relaxation to the teachers and non-teaching staff upto the



age of 35 years and for Headmasters 41 years, for treating such staff as Government servant.

3. Appellants-State is stated to have issued a circular on 04.02.1989 by which the minimum age prescribed for the post is 18 years and maximum age is 31 years (for General Category).

4. Learned counsel for the appellants-State submitted that in the light of the Full Bench Decision of this Court in the case of **Project Uchha Vidyalaya Shikshak Sangh Versus State and others and connected matters**, reported in **1999 SCC OnLine Pat 1039** in which it has taken note of the age criteria at paragraph-23 and it reads as under:

“23. That apart, this cannot be denied that at the time of initial appointment of these petitioners, there was no statutory rule or circular to prescribe the upper qualifying age for appointment of a teacher in a privately managed school. It would also appear that the State Government while taking over the management and control of other privately managed schools under the provisions of the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, had granted age relaxation to the teachers and non-teaching staff of these schools upto the age of 35 years. Therefore, although the relevant circular of the State Government, whereby the maximum age was relaxed to 35 years for the teaching and non-



teaching staff of the Non-Government Secondary Schools, is not applicable to the teaching and non-teaching employees of the Project Schools as already held above but having regard to the facts that they have continued uninterruptedly for several years, it would be in fact too hard to reject their claim at such a belated stage simply because some of them had crossed the age of 31 years at the time of initial appointment by the Managing Committee before the take over of the schools as Project School. I am, therefore, of the view that in the background of the facts stated above, such petitioners are also entitled for the regularisation/recognition of their services against the post within the aforementioned staffing pattern.”

5. It was pointed out that Circular dated 04.02.1989 has been taken note of while deciding the age factor to the extent that minimum age is 18 years and maximum age is 31 years (for General Category) to the post of Assistant Teachers who were appointed in the Project Schools. However, there is no reference to Act, 1980 cited supra. Therefore, the Judgment cited by the appellants-State is not assisting the appellants-State. In other words, the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, would



prevail over the Circular dated 04.02.1989. Unless and until Section 3(3) of the Bihar Non-Government Secondary Schools (Taking over of Management & Control) Act, 1980, is not modified from retrospective date insofar as fixation of age criteria to the extent that minimum age is 18 years and maximum age is 31 years (for General Category), the appellants-State have not made out a case so as to interfere with the order of the learned Single Judge dated 26.11.2018 passed in C.W.J.C. No.14128 of 2014.

6. Accordingly, the present L.P.A. stands dismissed.

7. Pending Interlocutory Application(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
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