

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1235 of 2023

In
Civil Writ Jurisdiction Case No.19876 of 2019

Praveen Singh, Son of Subhash Prasad Singh Resident of Village-Malaypur,
P.O. and P.S.-Malaypur, District-Jamui, PIN-Code-811313.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Primary Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Primary Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Magistrate, Jamui.
5. Shri Shyam Narayan Singh Son of Name not Known at Present Posted as the District Programme Officer (Establishment), Education Department, Jamui.
6. The District Education Officer, Jamui.
7. Shri Sunil Kumar Chand, Son of Name not Known, at Present Posted as the Block Development Officer Chakai, District-Jamui.
8. Shri Sitaram Das, Son of Name of Known at Present Posted as the Block Development Officer Chakai, District-Jamui.
9. Shri Arjun Yadav, Son of Name not Known at Present Posted as the Panchayat Sachiv, Panchayat Niyojan Ekai, Gram Panchayat Raj Dulampur, District-Jamui.
10. The Headmaster, Naveen Prathmik School, Badgunda Block, Chakai, District-Jamui.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Abhinav Srivastava, Advocate
Mrs. Shweta Anand, Advocate
Mr. Arpit Anand, Advocate

For the Respondent/s : Mr.Sarvesh Kr. Singh, AAG-3
Mr. Rajat Kumar Tiwari, AC to AAG-3
Mr. Abhinav Alok, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-09-2024

The appellant is aggrieved by the judgment of the learned Single Judge, which set aside the order of the Director, Primary Education dated 26.08.2023, which granted the reliefs sought for in the writ petition; which order was passed while the writ petition was pending. The appellant, who was the writ petitioner, is said to have been appointed by the District Education Officer, Jamui as an Elementary Panchayat Teacher on 08.08.2015.

2. It was the contention of the appellant that he was sent to the Panchayat Secretary of the concerned employment unit under a merit list prepared in the 4th Phase of teachers employment during the year 2014-15. The appellant's name appeared at Sl. No. 14 and he was called upon to join in the Primary School, Badgunda. However, when he submitted his joining to the Panchayat Secretary of Gram Panchayat on 11.09.2015, he was not immediately sent to the Primary School at Badgunda. It was the appellant's claim that he was working in the employment unit itself from 11.09.2015 to 05.07.2016, in which later date he was relieved by the Panchayat Secretary and was directed to join in the school; which joining was declined by the In-charge Principal of the School.



3. Contrary to the claim of the appellant, the learned Single Judge found that there is a relieving letter of 28.10.2016 under the signature of the Panchayat Secretary, Gram Panchayat Raj, Dulampur (Chakai), which speaks of his joining in the office only on 28.10.2016. The appellant, however, claimed that after his joining on 09.11.2016, he was also sent for training by the respondent authorities and he became a trained teacher on 27.04.2019, as is evidenced by Annexure-11, a certificate issued by the NIOS Study Centre, certifying him as having qualified Diploma in Elementary Education.

4. The appellant moved this Court in CWJC No. 15619 of 2019 for payment of his salary; which was withheld. The Writ Court directed a factual enquiry as to the validity of appointment and actual working of the appellant. The District Programme Officer (Establishment), Jamui was directed to enquire into the matter and if he was found to be appointed legally and validly and he had actually worked in the post, salary and consequential benefits were also directed to be paid.

5. The District Programme Officer, after calling for the records, found that the appellant's name was not figuring in the information sent to the District Programme Officer (Establishment) as to the selected teachers in the year 2014-15,



the relief by the Panchayat Secretary and joining after one year, was against the service rules and there was collusion of the Mukhiya, Panchayat Secretary and the Block Education Officer in the appointment of the appellant.

6. This order was challenged by the appellant in the instant writ petition. In the writ petition, the District Programme Officer (Establishment), Jamui specifically contended by way of a counter affidavit that Annexure-A, Departmental Notification clearly provided that no appointment of an untrained teacher shall be made after 31.03.2015. The appellant having been appointed on 31.08.2015 and having joined the school, even according to the appellant only on 29.10.2016, the mandate of NCTE stood violated.

7. The response of the writ petitioner/appellant was that the Director, Primary Education, Government of Bihar, had initiated the selection process much before 31.03.2015 and had carried out the appointment only after the said date.

8. Despite the consistence stand of the Director, Primary Education, the Deputy Director, Primary Education who filed a counter affidavit on behalf of the Director, Primary Education, submitted that he has already directed for payment of salary to the appellant treating the period from 31.08.2015 to



27.07.2020 as working period. It was also contended that the Law Department, Government of Bihar had decided that in the appointment process, untrained teachers can be appointed even after 31.03.2015.

9. The learned Single Judge also specifically noticed Departmental Notification No. 1769 dated 24.11.2014, wherein Notification No. 215 dated 25.08.2010 of the National Council for Teacher Education (NCTE) was referred to. The said Notification provided for exemption to the State Government, as regards the minimum teaching eligibility requirements only upto 31.03.2015; i.e. the mandatory requirement of a training qualification before appointment. Hence, the appellant who did not have the training qualification was not competent to be appointed after 31.03.2015. The learned Single Judge found that the Director, Primary Education who issued letter dated 25.03.2015 permitting untrained teachers to be appointed even after 31.03.2015, not only in Urdu but in all other subjects, was issued in violation of law. The exemption period as granted by the NCTE was found to have ended by 31.03.2015. The decision taken by the present Director, Primary Education, the Respondent No. 3, brought on record in the counter affidavit later filed, was found to be a decision taken in haste, without



leave of the Court and in violation of the mandate for obtaining training qualification. The decision of the learned Single Judge in CWJC No. 16214 of 2019 & analogous cases, titled as ***Md. Ataur Rahman & Ors. Vs. The Union of India & Ors.*** dated 19.10.2022, which considered the requirement under the Right to Education Act, was found to be not applicable. The Right to Education Act, 2009; Section 23 thereof and the regulations framed by the NCTE, were discussed to find that there was no relaxation provided with regard to minimum qualification for appointment of teachers in the elementary schools after 31.03.2015.

10. This is also the decision of the Full Bench of this Court, which interfered with the decision of the learned Single Judge in ***Ataur Rahman*** (supra) in ***Bibi Sakina Khatoon vs. Union of India, 2024(3) BLJ 1.*** Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009, was interpreted to find so in paragraph-41, which is extracted as under:-

“41. On the interpretation given by us to Section 23(1), we issue the following directions:-

(1) those who were appointed prior to 01.04.2010 who have acquired the teaching qualification on or before 08.08.2021 would be entitled to be continued;



(2) the results withheld, when declared, if it relates back to the period before 08.08.2021, those persons should be continued in employment;

(3) the issuance of certificates also would have to concede to the date of publication of results; which if published before 08.08.2021, those persons will be deemed to have been continued;

(4) the unqualified teachers who were appointed during the relaxation period, i.e. between 01.04.2010 to 31.3.2015 will also be deemed to have been continued, if they have acquired the teachers training qualification; the minimum qualification, on or before 08.08.2021.

(5) the persons, who were appointed after 31.03.2015, if are unqualified will have to be terminated even if, thy have acquired the qualification within 08.08.2021; since their appointment itself is invalid. There could not have been any unqualified persons appointed after 31.03.2015.

(6) those who were in place as teachers on 01.04.2010 and then on 31.03.2015, if not acquired the qualification before 08.08.2021 will stand terminated.”

(underlining above, by us, for emphasis)

11. Going by the decision of the Full Bench, there can be no appointment made of unqualified teachers after 31.03.2015. The exemption to so appoint; with the insistence upon obtaining a training qualification later was not extended after 31.03.2015.



12. We find absolutely no reason to interfere with the judgment of the learned Single Judge, which declined to sustain the change in stance made by the Director, Primary Education; which also is in violation of statutory mandate.

13. We reject the appeal, without entering any findings on whether the appellant had been actually working in the school and whether his appointment was carried out through a valid procedure; on which issues even the Government has contrary stances as revealed from the records.

14. Ordered accordingly.

15. Interlocutory application, if any, shall stand closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	12.09.2024
Uploading Date	18.09.2024
Transmission Date	

