

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12767 of 2021

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Nitu Shahi W/o Sanjay Kumar, R/o Durga Market, Main Road Masaurhi, PS-Masaurhi, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Education Department, Vikash Bhawan, Govt. of Bihar, Patna.
3. The Bihar Staff Selection Commission through its Secretary, Veterinary College Campus, Patna.
4. The Secretary, Bihar Staff Selection Commission, Bihar, Patna.
5. The Chairman, Bihar Staff Selection Commission, Bihar, Patna.
6. The District Education Officer, Patna.
7. The District Programme Officer (Establishment), Patna.
8. Sabina Kumari Wife of Gajendra Singh Resident of Village-Hussain Chak, P.S.-Naubatpur, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dinu Kumar, Advocate Ms.Ritika Rani, Advocate Mr.Varddan Mangalam, Advocate
For BSSC	:	Mr.Rana Vikram Singh, Advocate
For the Respondent/s	:	Mr.Kameshwar Kumar, GP 17

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 31-07-2025 Heard Mr. Dinu Kumar along with Ms.Ritika Rani and Mr. Varddan Mangalam, learned counsels appearing on behalf of the petitioner; Mr. Rana Vikram Singh, learned counsel for the Bihar Staff Selection Commission and Mr. Kameshwar Kumar, learned GP 17 for the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is



reproduced hereinafter :

“(A) For quashing part of the order vide Memo No.232 dated 11.02.2012 as contained in Annexure -5 issued by District Education Officer, Sasaram by which Sabita Kumari respondent no.8 who has lesser marks than the petitioner at serial no.5 have been appointed to the post of Assistant Teacher in Middle School, Akashi.

(B) Also for commanding the Bihar Staff Selection Commission to recommend the name of the petitioner for appointment to the post of Assistant Teacher against advertisement no.210/2010.

(C) Also for commanding the state respondents, Director, Primary Education to appoint the petitioner to the post of Assistant Teacher against Advertisement No.210/2010 against remaining post.

(D) Also for commanding the respondents to give all consequential service benefit of Assistant Teachers and pay protection from 11.02.2012 on which Sabita Kumari Respondent no.8 has been appointed.

(E) Also for necessary relief order/direction for which the petitioner is entitled in the eye of law as well as on facts of the case.”

3. A hard copy of the counter affidavit has been filed on behalf of the Bihar Staff Selection Commission defending the Advertisement No.210/2010 in respect of selection of private Respondent No.8 (Sabita Kumari) and in this regard, specific statement has been made in Paragraph No.12 of the counter affidavit, which is *inter alia* re-produced as follows : -

“12. That it is important to mention here that petitioner belongs to TELI caste who was at the time of advertisement i.e. in 2010 under BC-II category (OBC). At the time of advertisement



petitioner was under BO category and her training session is 1987-89. The cut off training session of BC Category is 1986-88 (B.Ed.) and the cut off training session of WBC is 1986-88 (two year training type). Due to being later than in her category, she has not been recommended. Thus, the applicant has not been found eligible for recommendation in neither BC nor WBC (Women of Backward Caste) category.”

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner belongs to B.C.- 2 category, as such, her eligibility has to be considered in terms of Bihar Special Primary Teachers Appointment Rules, 2010 (hereinafter to be referred as the “Rules, 2010”) and also in terms of **RTE Act, 2009**. Learned counsel further informs that the petitioner has already filed a detailed representation before the Additional Chief Secretary, Education Department, Government of Bihar but the same is pending till date.

5. Mr. Rana Vikram Singh, learned counsel has tendered his appearance on behalf of the Bihar Staff Selection Commission and he has submitted that the Bihar Staff Selection Commission is an examining body, which has published the result for appointment of the Assistant Teachers and the appointing authority is the State Government, which has to decide the case of the petitioner *vis-a-vis* respondent no.8 to meet any discrimination.



6. Learned counsel for the State has vehemently opposed the appointment of the petitioner and submitted that the writ petition is not maintainable considering the fact the selection process was initiated in the year, 2010 and the same has already been concluded, therefore, the petitioner has no *locus standi* to challenge the same after having become unsuccessful.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the respective parties, as well as, the fact that the State Government for appointment of Assistant Teachers (total 34540 in number) has framed Bihar Special Primary Teachers Appointment Rules, 2010. In the case of ***Pramod Kumar Yadav vs. the State of Bihar & Ors. (CWJC No. 1942 of 2024)***, this Court has taken into account the legislative history of the RTE Act, 2009, NCTE Notification and Rules, 2006, Rules, 2012 and Rules, 2020 relating to appointment of Niyojit teachers and the service condition of the Niyojit teachers. Niyojit teachers have been declared as dying cadre.

9. It has been alleged that the petitioner and the respondent no.8 belong to category of BC-2. Petitioner has obtained more marks than the respondent no.8, in spite of that,



the respondent no.8 has been appointed as the Assistant Teacher.

10. On perusal of the advertisement, which has been brought on record on behalf of the Bihar Staff Selection Commission in their counter affidavit it appears that the petitioner had applied for general subject. Total 2471 number of posts were advertised for the general subjects in the category of Backward Class. The petitioner has claimed that the petitioner is by caste *TELI* and the respondent no.8 is also by caste *TELI*. Now the question, as to whether the advertisement is in respect of only BC category ? In this regard, the clarification has been given in the counter affidavit filed on behalf of the State in paragraph no.7 and 8.

11. It has been submitted in paragraph no.17 of the writ petition that the petitioner has obtained total 1143 marks whereas respondent no.8 has obtained 913 marks in Teachers Training, which is lesser than the total marks obtained by the petitioner. In such circumstances, the petitioner has been able to show apparent discrimination in the process of the selection of the Assistant Teachers but this Court in want of records restrains from making any observation whether the petitioner has more marks or respondent no.8 has more marks.

12. I find it proper to direct the Additional Chief



Secretary, Education Department to call for the records relating to the result of the petitioner and the respondent no.8 and thereafter provide them opportunity of hearing to place their case so that both the petitioner and the respondent no.8 can produce their respective documents relating to their qualification and thereafter see whether the eligibility criteria as laid down by the NCTE Notification of the year 2010 and subsequently amended in the year, 2011 is fulfilled. He must see that the Central Act cannot be defeated while selecting a teacher, which is in the interest of the students.

13. The above exercise must be completed well within a period of six weeks from the date of passing of this order.

14. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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