

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15699 of 2022

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Akbar Miyan, Son of Indu Miyan, Resident of Village - Baraharpur, P.O. - Gayghat, P.S. - Harsidhi, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Patna.
2. The Director, Primary Education, Patna.
3. The District Magistrate, East Champaran at Motihari.
4. The District Education Officer, East Champaran at Motihari.
5. The District Programme Officer, Secondary, East Champaran at Motihari.
6. The Block Education Officer, Harsidhi, East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate.

For the Respondent/s : Mr. Jitendra Kr. Roy 1 (SC 13).

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

9 09-12-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“..... for issuance of an appropriate writ/directions for quashing the office order contained in Memo No. 89 dated 05.05.2022 issued by the District Programme Officer, Secondary Education and Literacy, East Champaran at Motihari whereby and whereunder the petitioner salary/stipend from 12.01.2015 till date as Jan Shiksha Swayam Sewak Talim Markaj date has been denied on the ground that the petitioner did not have requisite qualification of Intermediate at



the time of appointment. The petitioner further prays to make payment of salary/stipend of Jan Shiksha Swayam Sewak Talim Markaj from 12.01.2015 till date to petitioner and make payment of salary/stipend on month to month basis and also grant any other reliefs for which petitioner is entitle in the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed to the post of Jan Shiksha Swayam Sewak/Talim Markaj on 12.01.2015 in Rajiya Prathamik Vidyalaya, Braharpur, Harsiddhi, East Champaran and the petitioner has been discharging his duties. That at the time of his appointment, the petitioner was a matriculate and the selection of the petitioner was approved by the District Programme Officer (Literacy) East Champaran, Motihari vide Memo No. 18 dated 10.01.2015. That the petitioner, thereafter, completed his intermediate in the year 2016 and the District Programme Officer, Literacy, East Champaran on 01.06.2017 informed the B.E.O., Harsiddhi, East Champaran that the petitioner has passed his intermediate. That the petitioner along with another person filed CWJC No. 5172 of 2018 for payment of the salary and the said writ petition was disposed of vide order dated 18.07.2019 directing the District Programme Officer, East Champaran to verify the records and



make the necessary payments to the petitioner, in case, it was found that the petitioner was validly appointed and has been working. The Block Education Officer vide explanation dated 18.09.2017 stated that 215 Tola Sewak/Jan Shiksha Swayam Sewak/ Talim Markaj were appointed including the petitioner and there was no irregularity. That the authority vide impugned order dated 05.05.2022 bearing Memo No. 89 has rejected the case of the petitioner for payment of the salary/stipend from 12.01.2015 till date solely on the ground that the petitioner did not have requisite qualification of intermediate at the time of his appointment. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been discharging his duties from 12.01.2015 till 05.05.2022 and thereafter the petitioner was not allowed to discharge his duties solely on the basis of the Memo No. 89 dated 05.05.2022. Learned counsel submits that a perusal of the above mentioned impugned memo challenged in the present writ petition clearly demonstrates that the claim of the petitioner for payment of the arrears of salary was rejected and the petitioner has not been dismissed from the service. Learned counsel submits that once the petitioner has acquired the requisite qualification, the initial deficiency in the qualification, if any, at the time of appointment will pale into



insignificance and the authority cannot deny the salary on the said basis. Further, learned counsel for the petitioner has submitted that the petitioner has been discharging his duties from 2015 without there been any complaints from any quarters and prayed for allowing the present writ petition and also consequently direct the authority to continue the petitioner and allow him to discharge his duties. Learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of ***Man Singh Vs. The State of Uttar Pradesh through Secretary & Ors.*** reported in ***2022 LiveLaw (SC) 341*** and also another judgment reported in ***(2001) 3 SCC 328 (Buddhi Nath Chaudhary and Ors. Vs. Abahi Kumar and Ors.)*** in support of his case.

4. Per contra, the learned counsel appearing on behalf of the Respondent-State has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner's appointment itself was bad, illegal and contrary to the provisions of the Rules i.e. as per the rules, any person seeking appointment as Tola Sewak/Jan Shiksha Swayam Sewak/ Talim Markaj should necessarily have minimum qualification of intermediate but in this case, the petitioner was only having matriculation at the time of



appointment, therefore, the petitioner cannot seek the payment of salary or the arrears of salary. Learned counsel has stated that the order passed by the District Programme Officer, Secondary Education (Literacy) East Champaran, Motihari vide Memo No. 89 dated 05.05.2022 is a well reasoned order which does not require any interference by this Hon'ble Court and the same may be dismissed.

5. Admittedly, in this particular case, the petitioner has been appointed as Jan Shiksha Swayam Sewak/Talim Markaj by a duly constituted Selection Committee and his appointment was also approved by the competent authority on 12.01.2015. The petitioner, thereafter, has passed the intermediate examination in the year 2016 and the same was also informed to the BEO, Harsiddhi, East Champaran on 01.06.2017. It is also not disputed that along with the petitioner nearly 215 persons were also appointed to the post of Tola Sewak/ Jan Shiksha Swayam Sewak/Talim Markaj and the petitioner has been discharging his duties from 12.01.2015 without any complaint. Further, it is to be noted that the impugned order dated 05.05.2022 is passed rejecting the claim of the petitioner for payment of the salary/stipend and the arrears of salary solely on the ground that the petitioner did not



have the requisite qualification of intermediate at the time of his selection.

6. The Hon'ble Supreme Court in the case of ***Man Singh Vs. The State of Uttar Pradesh through Secretary & Ors.*** reported in ***2022 LiveLaw (SC) 341*** under the similar circumstances has held as under:-

“We find that the High Court has failed to consider the fact that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary.

Consequently, we find the order passed by the State-Government dated 24.12.1998 is wholly illegal and untenable. The High Court should have been appreciated the facts in the proper perspective and should have set aside the same. It appears that after the order was passed on 24.12.1998, the appellant was not working on the post of Principal.”

7. The Hon'ble Supreme Court in the case of ***Buddhi Nath Chaudhary and Ors. Vs. Abahi Kumar and Ors.*** reported in ***(2001) 3 SCC 328*** has also held as under:-

“If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate



steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.”

8. In this particular case also, the petitioner though he did not have the requisite qualification at the time of his appointment, has subsequently acquired the same and has been discharging his duties till the impugned order has been passed on 05.05.2022. The authorities having extracted the work from the petitioner cannot deny the payment of salary to the petitioner or the arrears of salary accrued from the Year, 2015. Further, it is to be noted that the order impugned in the present writ petition is an order rejecting the claim of the petitioner and not discharging or dismissing him from service. Therefore, the act of the respondents not permitting the petitioner to discharge his duties after 05.05.2022 is also illegal, bad and arbitrary.

9. Having regard to the above mentioned facts and



circumstances and also the judgments of the Hon'ble Supreme Court in the above mentioned cases, the impugned order dated 05.05.2022 is set aside. The authority is directed to calculate the salary of the petitioner from 12.01.2015 i.e. the date of appointment till 05.05.2022 and pay the same as expeditiously as possible preferably within a period of eight weeks from the date of the receipt of the copy of this order. The authorities are further directed to permit the petitioner to discharge his duties as the petitioner is now having the requisite qualification of intermediate. The petitioner shall be allowed to discharge his duties and he will be paid the salary/stipend every month.

10. With the above directions, the present Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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