

(2024) 05 PAT CK 0025**Patna High Court****Case No:** Civil Writ Jurisdiction Case No. 1870 Of 2021, 6149 Of 2022

Birendra Kumar @ Birendra Ray

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 16, 2024**Acts Referred:**

- Bihar Panchayat Prarambhik Shikshak (Niyojan evam Seva Shart) Niyamawali, 2012 - Rule 10

Hon'ble Judges: Anjani Kumar Sharan, J**Bench:** Single Bench**Advocate:** Vijay Anand, Pramod Kumar Singh, Rana Vikram Singh, Vijay Anand, Hitesh Suman, Rana Vikram Singh**Final Decision:** Dismissed**Judgement**

1. As same order has been impugned in both these writ petitions, with consent of parties, they are being heard together and disposed of by this common order.

2. Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the respondents.

3. The present writ petitions have been filed seeking the following reliefs:

(i) For a direction on the Respondents to consider and appoint the petitioners against the left over vacant post of Assistant Primary Teachers on the basis of their seniority of Academic Session without subjecting them to any further examination in terms of judgment dated 09.12.2009 passed in Contempt Petition (C)No.297/2007 (Nand Kishore Ojha Vs Anjani Kumar Singh) in Special Leave Petition (C) No.22882/2014, decided on 09.12.2009 and in the case of Pushpa Kumari and others, Civil Appeal No. 8521-8522/2011 decided on 11.10.2011 and as well as order dated 10.12.2014 passed in Writ petition (Civil) No.56/2014 (Vijendra Kumar Jaiswal & Others Vs State of Bihar and others). Consequent upon grant of Age Relaxation provided in Rule 10 of Bihar Panchayat Prarambhik Shikshak (Niyojan evam Seva Shart) Niyamawali 2012.

(ii) For a direction on the Respondents to fill up remaining vacant post of Assistant Primary Teachers out of 34540 from amongst the Teachers Trained by considering the case of the petitioners within the stipulated period fixed by the Hon'ble court in its order dated 15.01.2019 passed in C.W.J.C. No. 10843/2018 and in order dated 07.01.2019 passed in M.J.C. No. 181/2015 in C.W.J.C. No. 15822/2013 and analogous cases.

(iii) Any other relief or reliefs to which petitioners are found entitled in the facts and circumstances of the case.

4. Learned senior counsel for the petitioners submits that Millia Educational Trust, Rambagh, Purnia has two colleges, namely, Millia Sir Syed Primary Teacher Training College, Rambagh, Purnia, for short 'Men PTT College' and Millia Kaniz Fatima Primary Teachers Training College, Rambagh, Purnia, for short 'Women PTT College'. The State Government vide its order dated 15.12.1994 granted recognition to Men PTT college with retrospective effect for the sessions from 1989- 1991, 1991-93, 1993-95 and Women PTT College from 1988-90, 1990-92, 1993-95. The recognition was for two years diploma Teachers Training College namely BT Course. The petitioners got themselves admitted in the aforesaid two colleges in different Sessions for prosecuting two years BT course and by passage of time completed their course. The State Government cancelled the recognition of the aforesaid two colleges vide its order 18.11.1999.

5. In response to advertisement dated 26.05.2007 Bihar School Examination Board was approached for acceptance of fee and forms, but Board did not issue examination forms. Similar situated persons to the petitioners filed C.W.J.C. No. 7321/2007 for release of forms, acceptance of fees and forms and to allow them to appear in the examination. The writ application aforesaid was dismissed vide its order dated 24.08.2011 holding therein that the National Council for Teacher Education Act, 1993 (NCTE Act) has come into force and only NCTE can grant such recognition. Against order dated 24.08.2007 passed in C.W.J.C. No.7321/2007, LPA No.796/2007 was dismissed vide order dated 12.11.2007. Subsequently, Civil Review No.289/2008 was dismissed vide order dated 06.02.2009. Whereafter, SLP(Civil)No. 14746-14747/2009 was filed by Men PTT College, whereas SLP (Civil) No.14744-14745/2009 was filed by Women PTT College before Hon'ble Apex Court.

6. Hon'ble Apex Court vide its order dated 11.10.2011 passed in SLP (Civil) No.14744-14745/2009 allowed the appeals and set aside the order of the writ court, LPA court as well as Civil Review and directed the Board to conduct examination for the appellant therein as earlier as possible. Similarly the Hon'ble Apex Court vide its order dated 04.08.2012 passed in SLP (Civil) No. 14746-14747/2009 allowed the appeals and set aside the Judgment of Division Bench and single judge and directed the Bihar School Examination Board to conduct the examination of the appellant as early as possible.

7. The Bihar School Examination Board issued an advertisement on 29.04.2013 for examination to be held on 14, 15 and 16 May 2013 in which petitioners and others appeared, result whereof was declared in July/August 2013 and petitioners were declared successful. The petitioners completed their BT course in different session commencing from 1988-1990 to 1983-1985 and are eligible to be appointed as Assistant Primary Teachers in Primary School in the State of Bihar.

8. One Ram Vinay Kumar and others similarly affected persons filed writ application before this Hon'ble court assailing the process of selection by the Bihar Public Service Commission, their grievance was that the selection was made on District wise basis and the persons who had applied from a particular District were treated as applicants and selected thereof for appointment to the post in that particulars District only. The writ application was disposed of holding therein that the eligible candidates have a right of consideration for their appointment in any one or others District cadre of Assistant Teachers and the State could not force a person to confine his application for a particular District cadre at the time of application. Against the order dated 26.09.1996, SLP (Civil)No. 23187/1996 was filed before the Hon'ble Apex Court and the Hon'ble Apex Court vide order dated 05.09.1997 while disposing of the Special Leave Petition issued various directions including the selection shall be confined to applicants possessing teachers training qualification obtained from government/private teachers training

institution. The said decision laid down in case of Ram Vijay Kumar and others which is reported in (1998) 9 SCC 227.

9. Several writ petitions were filed against the State of Bihar raising issue relating to the recruitment of teachers in Primary Schools including that the direction giving by the Hon'ble Apex Court in the case of Ram Vijay Kumar and others (supra) have not been implemented. This Court directed the State of Bihar to follow the judgment and direction of the Hon'ble Apex Court in the case of Ram Vinay Kumar and in the case of Vinod Kumar. In subsequent writ application advertisement dated 10.12.2003 for recruitment of teachers were quashed as well as a positive direction was given that all trained teachers available were to be reckoned and considered for recruitment by selection or otherwise, to teach the elementary classes even upon relaxation of age.

10. One Nand Kishore Ojha filed writ application for implementation of order/judgment in the case of Ram Vijay Kumar which ultimately travel to Hon'ble Apex Court in SLP(Civil) No.22882/2004 wherein State of Bihar filed an application for withdrawal of SLP (Civil) No.22882/2004 against the final judgment dated 01.07.2004 passed in C.W.J.C. No. 13246/2003 and analogues cases by giving undertaking that as the number of Trained teachers in the State of Bihar are less than the available vacancy, no test for selection is required and they will appoint the trained teacher without any examination. The Hon'ble Apex Court vide its order 23.01.2006 disposed of the SLP (Civil)No. 22882/2004 in terms of undertaking dated 18.01.2006 of the State Government.

11. The State of Bihar was not appointing all trained teachers numbering more than 63000 as undertaken by it before the Hon'ble Apex Court, whereafter, the Hon'ble Apex Court vide detail judgment dated 09.12.2009 held that the State of Bihar has committed contempt of the order of Hon'ble Supreme Court and directed the State Government to appoint 34540 such trained teachers on the post of Assistant Primary Teachers in order of seniority on a one time basis (Annexure-2 of writ petition).

12. The petitioners attempted their best for consideration of their cases for appointment against left over 2413 post of Assistant primary Teacher but all their efforts went in- vain. Being aggrieved with the aforesaid circumstances, petitioners filed writ petition (Civil) No.56/2014 (Vijendra Kumar Jaiswal and Others Vs State of Bihar and others) which was disposed of vide order dated 10.12.2014 with a liberty to approach the High Court by filing an appropriate petition and while disposing of the writ application, following observation were made :-

"The High court would consider the observations made by this Court in the case of Nand Kishore Ojha Vs Anjani Kumar Singh, contempt petition (Civil) No. 297/2007 in Special Leave Petition (C) No. 22882/2014 decided on 9.12.2009 and in the case of Pushpa Kumari & others, Civil Appeal No. 8521-8522 of 2011 decided on 11.10.2011" (Annexure-3 of the writ petition).

13. The Staff Selection Commission issued notice containing in Memo No. 3791 dated 30.11.2017 to the effect that there exists 2213 vacant post of Assistant Primary Teachers out of 34540 in terms of Advertisement No. 210/2010. Some of the petitioners alongwith others under legal aid filed C.W.J.C. No. 17446/2015 for declaring Rule 10 of Bihar Panchayat Prarambhik Shikshak (Niyojan avam Seva Shart) Niyamawali 2012 to be declared as ultravires which was disposed of vide order dated 01.11.2017 (Annexure-5 of writ petition). Thereafter the petitioners along with others filed writ application bearing C.W.J.C. No.10843/2018 for direction on the Respondents to consider and appoint petitioners to the post of Assistant primary Teachers based on their seniority of Academic Sessions without subjecting to any further examination against the left over vacant post in the light of order dated 09.12.2009 passed in

Contempt petition (C) No.297/2007 and order dated 10.12.2014 passed in SLP (Civil)No. 56/2014 along with other reliefs.

14. The C.W.J.C. No.10843 of 2018, was disposed of vide order dated 15.01.2019 with the direction to the commission to conclude the entire exercise pertaining to Selection and appointment of teachers as also directed by this Hon'ble court by an order dated 07.01.2019 passed in M.J.C. No. 181/2015 within a period of three months from today. In the compelling circumstances petitioners had to file Contempt application bearing M.J.C. No. 1714/2019, for violation of order dated 15.01.2019 passed in C.W.J.C. No. 10843/2018, which was disposed of on 05.02.2020 with liberty to the petitioners for filing fresh writ application in case of any subsisting grievance, based on the statement of the Counsel appearing on behalf of Commission that it has already initiated the recruitment process in question which shall filled up the remaining vacant post. The Commission is yet to fill up left over 2213 vacant post of Assistant Primary Teachers till date. The petitioners had filed another Contempt application bearing M.J.C. No. 1061/2020 for violation of order dated 15.01.2019 passed in C.W.J.C. No. 10843/2018 which was permitted to withdrawn with liberty to filed Fresh writ petition vide order dated 21.10.2020 (Annexure-9 of writ petition).

15. Learned counsel for the petitioners further submits that the action of Respondents by not considering the appointment of the petitioners is violation of order of the Hon'ble Apex Court dated 10.12.2014 passed in writ petition (C) No. 56/2014 wherein Respondents were directed to fill up the post of Assistant Primary Teachers from amongst the Trained Teacher in order of seniority. He further submits that for no fault on the part of the petitioners they were deprived of appearing in BT course examination to be conducted by the Bihar School Examination Board which ultimately allowed the petitioners to appear in the examination in the light of decision of the Hon'ble Apex Court vide orders dated 11.10.2011 passed in Civil Appeal No. 8521-8522/2011 (Pushpa Kumari & others) order dated 14.08.2012 passed in Civil Appeal No. 5880-5881/2012 (Ashok Kumar & others) wherein petitioners were declared successful and thereby they shall be deemed to have been completed their BT Course in the Sessions 1989-91, 1991-93, 1993-95 from Men PTT College and from Academic Sessions 1988-90, 1990-92, 1992-94 from Women PTT College and are entitled for consideration of their case for appointment to the post of Assistant primary teachers in order of their seniority.

16. A supplementary affidavit has been filed on behalf of the petitioners in which it is stated that the petitioners have filed the writ application seeking consideration of their claims for appointment as Assistant primary teachers against the remaining vacant posts out of 34540 posts which was the subject matter of consideration in contempt petition case No. 297 of 2007 (Nand Kishore Ojha Vs Anjani Kumar Singh) reported in (2010) 6 SCC 653 (Annexure-2) to the writ petition. A number of writ applications were filed before this Hon'ble court raising issues relating to recruitment of teachers in Primary school which was resolved by the Hon'ble Apex court vide its order dated 05.09.1997 in the case of Ram Vijay Kumar vs State of Bihar reported in 1998(9) SCC 227.

17. The 2010 rules were framed and enforced to make appointment on 34540 posts of teachers a Government Primary School with cutoff date of 23.01.2006 (Annexure-10 of the writ petition). The State Government constituted "Bihar Staff Selection Commission" for short 'Commission' as Nodal agency to prepare the panel for appointment of such teachers for this purpose and sent a letter dated 08.06.2010 with requisition within the breakup of 34540 posts for all 38 districts. The commission issued an advertisement No. 210 of 2010 with last date of submission of application was 19.07.2010

(Annexure-12 of writ petition).

18. The Hon'ble Apex court appointed Hon'ble Justice V.A. Mohta, a retired Chief Justice of Orissa High Court as Special Officer in presence of whom panel was to be finalized. However, Justice V.A. Mohta, was substituted by appointing Hon'ble Justice S.K. Chattopadhyay, a retired judge of Jharkhand High Court. Hon'ble Justice S.K. Chattopadhyay, the special officer, submitted his report before the Hon'ble Apex court on 08.07.2011. The Hon'ble Apex Court approved the final merit list submitted by Hon'ble Justice S.K. Chattopadhyay, the special officer. It is also admitted fact that the petitioners have not filed any objection before the Hon'ble Justice S.K. Chattopadhyay (Retd.) committee and name of petitioners are not in the list made by Hon'ble S.K. Chattopadhyay committee.

19. The process of appointment was started against 34540 posts of teachers strictly as per the list finalized by the Apex court and while 32127 posts were filled up, 2413 posts remained vacant. The commission in keeping with a panel position of 94205 eligible candidates, had finalized the names of 34540 candidates strictly in accordance with the provisions of the rule, read with, terms of the advertisement and have sought to fill up 28600 posts of General subject teacher, 4827 posts of Urdu subject teacher, and 1113 posts from Physical subject teacher.

20. The Respondent State issued consequential order of appointment in favour of 34540 candidates. However, 2413 posts could not be finally filled up, as 1929 candidates did not turn up for counselling whereas case of 366 candidates were kept pending for final decision and rest 118 candidates were found to be ineligible. Thereafter, the respondent State submitted the status report before the Hon'ble Apex court stating therein that for filling up 34540 posts of teachers, 2413 posts have remained vacant. Thereafter, a C.W.J.C. No. 17899/2012 (Kanti Kumari Vs State of Bihar) was filed before this Hon'ble Court for a direction on the Commission to make correction in the integrated session wise seniority list of Primary Teachers passing the Primary Teacher Training Examination in session column as 1978-79 in place of 1989-91 as mentioned in the list and further make correction in the column category as most backward class in place of General category along with ancillary reliefs various other writ applications were filed raising individual grievances, wherein this Hon'ble court found that the residuary action was now to be taken by the State of Bihar in consultation the Commission in terms of status report submitted before the Hon'ble Apex court. This Hon'ble court taking into account the order of the Hon'ble Apex court directed the State to come out with its modality under which it had proposed to fill up the vacant 2413 posts.

21. On 28.10.2013, the Director Primary Education filed a Counter Affidavit bringing on record, the modalities for filling up of the remaining vacant post i.e. 2413 posts in following manner :-

"(a) "As with regard to the seniority list prepared earlier by the Bihar Staff Selection Commission it has been contended by some of the petitioners that their caste category had wrongly been recorded on account of which their appointment could not be made. In such cases after necessary correction in their caste category, if on the basis of seniority, they come within the zone of consideration then they could be considered for appointment against their own subject and category.

(b) Similarly as with regard to the seniority list prepared earlier by the Bihar Staff Selection Commission contention has been raised by the individuals that their training sessions had wrongly been recorded on account of which their appointment could not be made. In such cases after necessary correction in the training session, they come

within the zone of consideration such cases could be considered for appointment against the vacancies of the said subject and category.

(c) A part from the aforesaid two categories, certain cases raising issue that though they had finally been recommended by the Bihar Staff Selection Commission for appointment and accordingly letter of appointment had also been issued by the district authority, but it was on account of different reasons that they could not join within the prescribed stipulated time, in such cases opportunity to be given to be considered a fresh against their own category and seniority.

(d) That after the appointment of candidates of the aforesaid categories is finalized and if vacancies still remain, further consideration for appointment is proposed to be made on the basis of seniority list approved by the Hon'ble Apex court on subject and category wise vacancy.

(e) Further if any particular subject or category candidates are not available the said post be transferred to the reserve category.

(f) Lastly it is only proposed not to appoint such candidates who would be reaching 60 years of age on 31.03.2014 as it will be soon after the proposed appointment that they would superannuation."

22. This Hon'ble Court observed that if, after considering the pending 2413 cases, any vacancy of 2413 posts remains unfilled then any exercise will be taken for appointment of any persons by upgrading the place in the panel or even including anyone in the panel on account of his/her being eligible by declaring to have passed the teachers training examination from the recognized institution with validity of the session and the number of seats as per condition of recognition.

23. A counter affidavit has been filed on behalf of respondent no.3 in which it is stated that out of 2204 post which remained vacant due to non-joining of the candidates, recommendation of 2178 candidates have already been made by the Commission. So far as remaining 26 vacancies are concerned, it is stated that out of said 26 vacancies, 20 is of General Subject under MBC category. Since, no suitable candidate was available in the said category, no recommendation could be made against those 20 vacancies.

24. Learned counsel for the respondents submits that in column 6/ (ii) of the advertisement it is mentioned that, candidate must have passed their Training examination till 23.01.2006, but from perusal of the statements made in writ petition, it transpires that the Petitioners have passed their examination the year of 2013. Therefore, they are not eligible to even apply (Annexure-A to the counter affidavit filed on behalf of the respondent no. 3). He further submits that Hon'ble Court in CWJC No. 17899/2012 also quoted the Bihar Special Elementary Teacher Appointment Rule, 2010 in para-5 of the judgement dated 15.10.2014, which Rule-4 clearly specified that " 23 2006 "

25. Learned counsel for the respondents lastly submits that the petitioners had not requisite qualification at the time of advertisement as they have not fulfilled the terms and conditions of the advertisement and even they have not applied, therefore, their candidature cannot be considered by the Commission.

26. Having heard arguments advanced on behalf of the parties, in my opinion, it is admitted fact that in the advertisement No. 210/2010 it is mentioned that candidate must have passed their Training examination till 23.01.2006, but from perusal of the statements made in writ petitions, it transpires that the petitioners have passed their examination the year of 2013. Therefore, the petitioners' case is not similar to the order

passed by the Hon'ble Apex Court in the case of Nand Kishore Ojha vs Anjani Kumar Singh reported in (2010) 6 SCC 648. It is also admitted fact there is no vacant post available, it is also clear from the counter affidavit filed on behalf of the respondent no. 3 in which it is stated that recommendation of 2178 candidates have already been made by the Commission. So far as remaining 26 vacancies are concerned, it is stated that out of said 26 vacancies, 20 is of General Subject under MBC category. Since, no suitable candidate was available in the said category, no recommendation could be made against those 20 vacancies.

27. Considering the facts and circumstances of the case and from perusal of the records, I am of the view that there is no merit in the present writ petitions, accordingly, the present writ petitions stand dismissed.