

(2017) 11 PAT CK 0051

In the Patna High Court

Case No : 19363 of 2016

Nitish Kumar Singh Son of Late Jay Prakash Narayan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-11-2017

Acts Referred:

Citation : (2017) 11 PAT CK 0051

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Advocate : Ram Suresh Roy, ?Arjun Prasad Singh, Kameshwar Prasad Singh,
Narendra Kumar

Final Decision : Disposed off

Judgement

1. Heard Mr. Ram Suresh Roy, learned senior counsel along with Mr. Arjun Prasad Singh, learned counsel for the petitioner and learned A.C. to G.P. 20 for the State.
2. The petitioner has moved the Court for being re-instated in service after having been removed subsequent to him being appointed on 24.04.2015 on compassionate ground.
3. The admitted facts of the case are that the father of the petitioner died in harness as an Assistant Teacher and consequent thereto, the petitioner was also appointed as teacher in Utkramit Middle School, Bhagwanpur in the district of Bhojpur where he joined on 30.04.2015. After having worked for seven months, his services were terminated on the ground that he did not possess the

required qualification for being appointed on the said post. The petitioner has the qualification of Intermediate pass with about 43% marks, though in the Graduate Examination, he was successful and has secured 1st Division. However, in view of the regulations relating to appointment of such teachers requiring minimum 45% in Intermediate for being eligible to be appointed, the petitioner clearly does not cross the eligibility bar.

4. Learned counsel for the petitioner submitted that in the present case the object for which the appointment was made is a vital aspect and cannot be lost sight of. It was submitted that when the appointment was on compassionate ground, that is, in view of the guardian of the concerned person having died in harness and that too for the purpose of getting over the immediate crisis faced by the family, such schemes are enforced. In such background even with a shortfall of about less 2% of the qualifying marks for eligibility, the petitioner having worked for seven months without any complaint as teacher *moreso*, as he is a Graduate having passed in 1st Division, it cannot be said that the petitioner is not fit for such job. It was further submitted that even the government has to be conscious of the object to be achieved by such stipulation and there should be some dynamism in the policy so that genuine cases do not suffer. In support of his contention, learned counsel relied upon a decision of a Bench of this Court in the case of *The Rohtas District Non-Formal Education Instructor Association and Ors. Vs. Sheo Bhajan Prasad Diwakar and Ors.* reported as 2017(1) PLJR 254, the relevant being at paragraph no. 7.

5. Learned counsel for the State submitted that the authorities or the State, in view of the present position in law, do not have any discretion to relax the criteria as the statute itself provides the minimum qualifying of at least 45% marks at the Intermediate

level and the petitioner admittedly not crossing the said 45% threshold, the appointment not being proper, has rightly been terminated.

6. At this juncture, learned counsel for the petitioner submitted that even for the period of seven months which he had worked he has not been paid any remuneration.

7. Having considered the matter, the Court is not in a position to pass any positive order. However, if the petitioner makes a representation before the respondent no. 4 with regard to his case being considered for employment on any equivalent of even a lower post for which such eligibility criteria does not come in the way of the petitioner, the representation shall be considered, also in the background that such employment is on compassionate ground for a specific purpose and not a regular appointment where the petitioner has to compete with others to enter into service. Thus, without breaching the law, if the petitioner can be adjusted on any equivalent or lower post, without there being any bar in law, the same shall be considered and a reasoned order passed. At the same time, the petitioner is also at liberty to either appear in the supplementary, if there is provision, for improving his marks or to again appear for the Intermediate Examination, if so permitted, to improve his marks, which may make him eligible for appointment to the post on which he has been initially appointed.

8. As far as non-payment of salary is concerned, since the petitioner has worked on the post and discharged duties on such post, the appointment not being on the basis of any fraud or misrepresentation on his part, the authorities cannot deny payment for such period.

9. Accordingly, a direction is issued to the respondent no. 4 to ensure that the payment for the period the petitioner has

worked in the school is made to him within four weeks from the date of production of a copy of this order.

10. The writ petition stands disposed off in the aforementioned terms.