

(2018) 09 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14612 of 2015

Sri Awadhesh Kumar Gupta

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 07-09-2018

Acts Referred:

Citation : (2019) 3 PLJR 562

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; State and respondent no. 7.

2. The petitioner has moved the Court for the following reliefs:

(i) For issuance of an order, direction or a writ in the nature of Certiorari, for quashing the Letter No. 64 dated 19.02.2014 (Annexure-5), issued under

the signature of District Education Officer, Nalanda, whereby and where under the Report dated 09.09.2013 of the Internal Five Men Committee

(Annexure-4) as regards verification / identification of posts of B.A/ B.Sc. Trained Scale of Pay in the different Middle Schools of the district of

Nalanda has been rejected, in a complete arbitrary and discriminatory manner.

(ii) For issuance of an order, direction or a writ in the nature of Certiorari, for quashing the list of total Sanctioned and Vacant posts of B.Sc. / B.A.

trained teachers as contained in Annexure-11, whereby the Respondent No. 5, in a complete illegal and arbitrary manner, published the list of

Sanctioned and Vacant posts of B.Sc. / B.A. trained teachers for Bihar Sharif Nagar Nigam Area.

(iii) To hold and declare that in Middle School Mathuria, Bihar Sharif, the post of

B.Sc. Trained teacher is/was sanctioned and available since 1980

itself, and in the said school the post of B.A. Trained Teacher is not available, thus, (in view of the policy decision so framed by the State Govt. as

contained in Annexure-10), the petitioner is entitled for being posted as B.Sc. Trained Teacher at Middle School Mathuria, Biharsharif.

AND CONSEQUENT UPON SUCH DELCARATION

A writ in the nature of mandamus may be issued commanding the respondents concerned to allow the petitioner to continue in the Middle School,

Mathuria, as B.Sc. Trained Teacher, and grant all consequential benefits of Promotion, w.e.f. 29.11.2012, on the post of B.Sc. Trained Teacher / in the pay scale of B.Sc. Trained Teacher.

(iv) To hold and declare that the action of the respondents concerned in not considering and disposing of the representation of the petitioner dated

28.04.2014 / 08.08.2014/ 08.12.2014x / 15.06.2015 (Annex-2 & 3 Series) even till date is illegal, arbitrary, malafide, malicious and unsustainable in the

eye of law and on facts both and is fit to be deprecated by this Honâ??ble Court in strong words.

(v) For grant of any other relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.â??

3. The facts which are not in dispute indicate that the petitioner was initially a Matric Trained Teacher at Middle School Mathuria, Biharsharif in the

district of Nalanda and later on, upon acquiring the qualification of Graduate Trained, he was promoted to the said post along with many others by

order dated 29.11.2012. However, the petitioner was posted at Uttrakramik Madhya Vidyalaya, Shahabad at Katrisarai whereas, the respondent no. 7

was posted in the school of the petitioner. The petitioner being aggrieved by his shifting to another school moved the Court in C.W.J.C. No. 705 of

2013, which was disposed off by order dated 17.01.2014, with certain observations in the background that the availability of sanctioned post in the

school in question was under consideration. However, when nothing happened, the petitioner has again moved the Court in the present writ

application.

4. Learned counsel for the petitioner submitted that a simple and clear cut issue has not only been made complicated but rather discloses mala fide on

the part of the authorities. He submitted that the school in question has only one

sanctioned post of Graduate Trained Teacher and from the records, it is clear that right from the year 1981, it was filled up by a Graduate Trained Science Teacher. In support thereof, he referred to Annexure-13. He further drew the attention of the Court to the relevant portion in the Five Member Committee Report which has noted down the details of the letter by which the post of Graduate Trained Teacher was shown in the Science subject in the school in question. Learned counsel submitted that giving a complete go-by to the factual and legal aspects, the respondent no. 7 has been brought from another school whereas, the petitioner has been sent to another school, which is totally arbitrary and patently illegal. It was further submitted that before the State Information Commission, by various orders it has been recorded that the single post in the school in question is not reserved for a Graduate Arts Teacher.

5. Learned counsel for the State could not show any material to counter the submissions of learned counsel for the petitioner except for the noting in the Five Member Committee Report dated 06.09.2013, which indicates that in the school in question, the Graduate Trained Teacher post was in the subject of Arts. However, besides that, learned counsel could not show anything to the Court to establish that the post in the school in question of Graduate Trained Teacher was reserved for Arts. He was also not able to either explain or meet the stand of learned counsel for the petitioner in relation to the official documents brought on record which disclose that in the school in question, right from March, 1981, the post was filled up by a Graduate Trained Science Teacher.

6. Learned counsel for the respondent no. 7 fairly submitted that he is not involved in the dispute and has joined the post in terms of the order impugned. On a further query of the Court as to whether he would like to assist the Court on the merits of the matter, learned counsel submitted that it is for the State and its authorities to substantiate such claim as he has no role in the matter.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned and the conduct of the respondents cannot be sustained in law. In view of there being an official document to show that right from March, 1981 till September, 2012, the post was filled up by a Graduate Trained Science

Teacher in the school in question coupled with the fact that even the Five Member Committee has noted in its minutes that a post of Graduate Trained Science Teacher was available in the school under letter No. 4540 dated 30.03.1988, and the orders of the State Information Commission of the year 2018, which clearly shows that there was no post reserved for Graduate Arts Teacher in the school in question, the Court finds that the action of the authorities in not considering the case of the petitioner for being posted in the school is totally unjustified, arbitrary and without any justification either on facts or in law. The sole reference of a post of Graduate Arts Teacher in the report of the Five Member Committee dated 06.09.2013, is also of no benefit to the authorities for the reason that in the meeting, initially they earmarked that post as a Graduate Arts Teacher but in the very report such earmarking itself is falsified as there is a definite letter number and date given of the order by which the post of Graduate Trained Science Teacher was shown in the school in question. Thus, the Five Member Committee on 06.09.2013, just noting that the post in the school in question was earmarked for Graduate Trained Arts Teacher is absolutely without any basis, much less, any justification. Moreover, when right from 1981 till September, 2012, the post has been filled up by a Graduate Trained Science Teacher, without any demur, objection or controversy being raised in this regard, the transfer of the petitioner to another school and posting of respondent no. 7, who is a Graduate Trained Arts Teacher on the sole post of Graduate Trained Teacher on 29.11.2012, in the school in question is totally unsustainable. The Court would note here that though there is a specific letter to indicate the existence of a post of Graduate Trained Science Teacher in the said school, but on the contrary there is nothing at all to show that the solitary post was of Graduate Trained Arts Teacher.

8. For the reasons aforesaid, the impugned orders are set aside. The authorities are directed to issue order posting the petitioner on the Graduate Trained Teacher post in the school in which he was posted prior to 29.11.2012. With regard to respondent no. 7, he may be posted in accordance with the Rules or at the post the petitioner was posted upon his promotion, if he so desire. Let the exercise be completed within a period of three weeks from the date of production of a copy of this order before the respondents no. 4 and 5.

9. The writ petition stands allowed in the aforementioned terms.