

IN THE HIGH COURT OF JUDICATURE AT PATNA

Nazir Hussain

versus

The State of Bihar & Ors.

LPA No. 201 of 2021

(In CWJC No. 7422 of 2020)

25-08-2023

[Hon’ble Mr. Justice P. B. Bajanthri
& Hon’ble Mr. Justice Arun Kumar Jha]

Issue for Consideration

Whether Rule 6 and Rule 8(2) of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (as amended in 2008) necessitate that the certificate must be issued by a government-recognized board/institution?

Headnotes

Contention of the appellant that Rule 8 (2) of the Rules is not applicable for a person holding the degree of Molvi is misconceived since Rule 8 (2) of the Rules only provides that the persons having qualification and degree of Molvi will not be considered for appointment as a general teacher. It is nowhere prescribed that the person is not required to have a degree from an institution recognized by the government. Even unamended Rule 8 (2) makes the fact clear that the institution must be recognized by the government. After amendment, Rule 8 (2) of ‘the Rules’ is applicable in the case of the appellant and for appointment of Block Teacher, Rule 6 and Rule 8 (2) of ‘the Rules’ both are to be read together. Degree of Molvi possessed by the appellant has been issued by an institution which was not authorized to issue any such certificate. (Para 13)

Appeal is dismissed. (Para 16)

Case Law Cited

Not mentioned in the judgment.

List of Acts

Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (as amended in 2008)

List of Keywords

Block Teacher (Untrained); Molvi Certificate; Forged Document; Government Recognition; Termination from Service; Rule 6 and Rule 8(2); Urdu Teacher; Vigilance Enquiry; Appellate Jurisdiction

Case Arising From

Judgment dated 09.02.2021 passed in CWJC No. 7422 of 2020 by the learned Single Judge dismissing the appellant's writ petition.

Appearances for Parties

For the Appellant: Mr. Arjun Prasad, Advocate

For the Respondents: Mr. Shashi Shekhar Tiwary, AC to AAG-15

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.201 of 2021

In

Civil Writ Jurisdiction Case No.7422 of 2020

Nazir Hussain, son of Md. Abbas, Resident of Village and Post-Sakri Saraiya,
P.S.-Kudhani, O.P.-Turki, District-Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principle Secretary, Education Department, Government of Bihar, Patna.
2. The Director Primary Education Government of Bihar, Patna.
3. The Bihar State Madarsa Education Board through the Examination Controller, Patna.
4. The District Program Officer, Establishment, District Vaishali.
5. The Secretary, Block Teacher Niyojit Unit General Cum Block Development Officer, Goraul, District Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Arjun Prasad, Advocate

For the Respondent/s : Mr. Shashi Shekhar Tiwary, AC to AAG-15

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-08-2023

Learned counsels for the appellant and the respondents
have been heard.

2. The present L.P.A. is directed against the judgment
dated 09.02.2021 passed in CWJC No. 7422 of 2020 by the
learned Single Judge of this Court whereby and whereunder the
civil writ petition filed by the appellant has been dismissed.

3. In the writ petition, the appellant-petitioner has



sought following relief :

“i) For quashing the order as contained in memo no.2359 dated 29.11.2019 issued under the signature of respondent no.5 whereby and whereunder the petitioner has been terminated from the service pursuant to the direction given by respondent no.4.

ii) Also for commanding the respondents to reinstate the petitioner to the post of panchayat teacher of middle school Islampur, Block Goraul, District- Vaishali and grant all consequential benefits to the petitioner w.e.f. the date of termination.

iii) And for any other relief (s) for which petitioner is found to be entitled in view of the facts and circumstances of the case”.

4. Brief facts of the case are that an advertisement was published for appointment of Block Teacher. The appellant having requisite qualification applied and following the process, he was selected. Thereafter, he was appointed as Block Teacher (Untrained), Urdu by an order contained in letter no. 744 dated 28.12.2010 issued under the signature of the Executive Officer, Block Panchayat Samiti, Goroul and was posted and joined in Middle School, Islampur.

5. The appellant acquired his qualifying certificate of Molvi from an Institute, namely, Jamia Rahmania Hamdia



Pokhrai (Sharif), Sitamarhi in the year, 2005 and at the time of selection on the post of Block Niyojit Teacher, he submitted the said certificate of Molvi before the Selection Committee. The Selection Committee, after due scrutiny, issued the appointment letter in favour of the appellant and, thereafter, the appellant started discharging his duties to the satisfaction of all concerned.

6. The appellant received a show cause notice dated 03.09.2019 issued by the respondent no.5 stating therein that the certificate of Molvi of the appellant has been found to be forged during the vigilance enquiry and an FIR bearing Goraul P.S. Case No.264/2019 has been registered and the appellant was asked to submit his reply to the said show cause notice. The appellant filed his reply on 14.09.2019 stating therein that the District Education Officer, Sitamarhi vide letter no. 981 dated 20.05.2011 submitted an enquiry report after physical verification of the institute in question and it was found that the institute in question was in existence and it was in the list of Madarsa and was running successfully. However, vide order dated 29.11.2019 issued under the signature of the respondent no.5, the services of the appellant was terminated. Against the said order dated 29.11.2019, the appellant preferred CWJC



No.7422 of 2020 before the learned Single Judge. The learned Single Judge having considered the matter in its entirety, dismissed the aforesaid writ petition vide judgment dated 09.02.2021, which is under challenge in the present LPA.

7. The learned counsel for the appellant submitted that appointment of the appellant was made on the post of Block Teacher (Untrained), Urdu in terms of the Rule 6 of Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 as amended in 2008 (hereinafter 'the Rules'). The learned counsel further submitted that the ground for termination of the appellant from service that his certificate of Molvi has been found to be forged during the vigilance enquiry is not sustainable in the eyes of law as at the time of appointment, the institute in question was running successfully and it was recognized by the Madarsa Board. The learned counsel further submitted that the appellant having been appointed in the year 2010, would be governed by the 2008 Rules which did not have any such condition. As per Rule 6 of the 2008 Rules, the only requirement was that degree holder of Molvi would be appointed in Urdu and as per Rule 8(ka)(2) such degree holders in Molvi would not be eligible for appointment as general teacher. The learned counsel further



submitted that the respondent-State never imposed condition (till the year 2012) that only such candidate would be eligible to be appointed on the post of Urdu Teacher who got the degree of Molvi from Bihar State Madarsa Education Board.

8. On the other hand, the learned counsel for the respondents submitted that the institute, in question, i.e., the Jamia Rahmania Hamdia Pokhraise (Sharif), did not have the authority to issue mark sheet/certificate for Molvi. The said institute was not authorized to issue certificates for Molvi/Aalim and was recognized institute for the purpose of issuance of certificate for only Wastania/Fokania equivalent to class VIII & X. Any certificate issued for Molvi by an institute which was not recognized and authorized for the same purpose would be beyond its capacity and thus a forged certificate. Thus, the appellant having obtained his appointment on such forged certificate, an FIR has been registered against the appellant. Moreover, under Rule 8 of the Rules, it has been provided that the degree must be obtained from an educational institute/Board recognized by the government. The learned counsel, thus, submitted that no interference in the impugned judgment of learned Single Judge is called for as the same has been passed after duly considering all the materials on record.



9. Having considered the material available on record and further considering the rival submissions, core question, which arises for consideration, is whether the appellant was required to obtain the Molvi certificate from an institute/Board recognized by the government?

10. It appears from the records that the appellant was appointed to the post of Block Teacher in Middle School, Islampur, Goraul Block, Vaishali on the basis of certificate of Molvi issued by Jamia Rahmaniya Hamdiya, Pokhraise, Rajpur, Sitamarhi. During verification of the certificates of the teachers, it was found that the appellant did not submit his Molvi certificate issued by any government recognized Board and his Molvi certificate was issued by the aforesaid Jamia Rahmaniya Hamdiya, Pokhraise, a private Madarsa being run by private persons having no power to issue certificate and the appellant fraudulently, on the basis of fake certificate, applied for employment as a Teacher. Accordingly, an FIR bearing Goraul P.S. Case No.264 of 2019 was lodged against the appellant and others. Thereafter, the District Programme Officer (Establishment), Vaishali vide letter dated 19.08.2019 directed the Member Secretary, Block Teachers Employment Committee to take necessary action against the appellant in accordance with



law. Thereafter, a meeting of the aforesaid Committee was held on 29.08.2019 in which it was unanimously decided that the Member Secretary would ask for show cause from the appellant and, accordingly, show cause notice was issued on 03.09.2019. Thereafter the appellant submitted his detailed reply to the show cause on 16.09.2019. The entire matter was again put up before the Committee on 26.10.2019 and in the said meeting, reply of the appellant was duly considered and it was decided to terminate the service of the appellant. Accordingly, the Member Secretary issued a letter dated 29.11.2019 terminating the appellant from service with immediate effect.

11. Evidently, the appointment of the appellant was made in the year 2010 under the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 which was amended in 2008. The appellant has stressed Rule 6 and Rule 8 (2) of the said Rules to claim that there was no condition in the aforesaid Rules to the effect that the appellant was required to possess the qualification of degree in Molvi from an institution recognized by the government. Now, the relevant parts of Rules 6 and 8 of the 'the Rules' (unamended) read as under :

*“6. उर्दू शिक्षकों का नियोजन:-
विद्यालय के मात्र उर्दू इकाईयों पर उर्दू योग्यता*



रखने वाले तथा मौलवी योग्यताधारी अभ्यर्थियों का नियोजन किया जायेगा ।

8. नियुक्ति हेतु :-

(क) अर्हता :

प्रखण्ड शिक्षक के लिये :-

1. XXX XXX

2. सरकार द्वारा मान्यता प्राप्त शिक्षण संस्थान से उच्चतर माध्यमिक अथवा इन्टरमीडिएट अथवा समकक्ष परीक्षा उत्तीर्ण हों ।

3. XXX XXX

पंचायत शिक्षक के लिये :-

1. XXX XXX

2. सरकार द्वारा मान्यता प्राप्त शिक्षण संस्थान से उच्चतर माध्यमिक / इन्टरमीडिएट अथवा समकक्ष परीक्षा उत्तीर्ण हो ।

3. XXX XXX

12. After amendment in 2008, the relevant parts of the

Rule read as under :-

“6. उर्दू शिक्षकों का नियोजन:-

विद्यालय के मात्र उर्दू इकाईयों पर उर्दू योग्यता रखने वाले तथा मौलवी योग्यताधारी अभ्यर्थियों का नियोजन किया जायेगा ।

8. नियुक्ति हेतु :-

(क) अर्हता :

प्रखण्ड शिक्षक के लिये :-

1. XXX XXX

2. सरकार द्वारा मान्यता प्राप्त विद्यालय / महाविद्यालय/ बोर्ड से उच्चतर माध्यमिक / इन्टरमीडियट अथवा समकक्ष परीक्षा उत्तीर्ण हो किन्तु इसके अन्तर्गत तकनीकी शिक्षा की डिग्री (पोलीटेकनिक, यूनानी शिक्षा आदि) शारीरिक शिक्षा, प्राच्यभाषा/ भाषा विशेष से सम्बन्धित डिग्री (मौलवी, उप शास्त्री) तथा स्वैच्छिक संस्थानों द्वारा प्रदत्त समरूप डिग्री (विभाग द्वारा निर्णीत) सामान्य शिक्षक



पद पर नियोजन हेतु सम्मिलित नहीं है।

3. xxx xxx

पंचायत शिक्षक के लिये :-

1. xxx xxx

2. सरकार द्वारा मान्यता प्राप्त शिक्षण संस्थान से उच्चतर माध्यमिक / इन्टरमीडिएट अथवा समकक्ष परीक्षा उत्तीर्ण हो।"

13. No doubt, Rule 6 of 'the Rules' provides for appointment of Urdu Teacher on the basis of his qualification as Molvi. On the other hand, unamended Rule 8 (2) of 'the Rules' provides that only those persons should be appointed who possess a degree of Higher Secondary, Intermediate or equivalent from an institution/Board recognized by the government. Further, after amendment in 2008, a clarification has been added that certain qualification/degree holder would not be entitled for appointment on the post of general teacher. Hence, the contention of the appellant that Rule 8 (2) of the Rules is not applicable for a person holding the degree of Molvi is misconceived since Rule 8 (2) of the Rules only provides that the persons having qualification and degree of Molvi will not be considered for appointment as a general teacher. It is nowhere prescribed that the person is not required to have a degree from an institution recognized by the government. Even unamended Rule 8 (2) makes the fact clear that the institution must be



recognized by the government. After amendment, Rule 8 (2) of 'the Rules' is applicable in the case of the appellant and for appointment of Block Teacher, Rule 6 and Rule 8 (2) of 'the Rules' both are to be read together. This fact is more clear from further reading of Rule 8 (2) of 'the Rules' regarding appointment of Panchayat Teacher wherein it has been specifically mentioned that person should have a degree from an institution/Board recognized by the government. If this qualification is there for Panchayat Teacher natural corollary that the same would be applicable *a fortiori* to the eligibility qualification for a Block Teacher. Therefore, we do not think there is any merit in the contention of the learned counsel for the appellant that only Rule 6 should be read for appointment of Block Teacher and it is immaterial from where qualifying degree has been obtained. Further, the fact is also admitted that the degree of Molvi possessed by the appellant has been issued by an institution which was not authorized to issue any such certificate.

14. From the discussions made here-in-above, it is abundantly clear that the appellant obtained his certificate of Molvi in the year 2005 from an institute, namely, Jamia Rahmania Hamdia Pokhraira (Sharif) in the District of



Sitamarhi, which was not recognized/authorized by the government for issuing such certificate. The appointment of the appellant was bad on the basis of a certificate obtained from an unrecognized institute and, as such, this Court finds no illegality in the order dated 29.11.2019 passed by the respondents terminating the services of the appellant.

15. In the light of discussion made hereinabove and under the facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error while dismissing the petition of the appellant, which calls for interference by this Court in exercise of the appellate jurisdiction. We uphold the order passed by the learned Single Judge.

16. Accordingly, the present Letters Patent Appeal is dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R
CAV DATE	18.08.2023
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