

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3887 of 2025

Chitra Devi @ Kumari Chitra Devi, Daughter of Ghanshyam Singh, Resident of Village- Rustampur Taqipuara Pooran, Post- Mahua, P.S.- Nehtaur, District - Bijnor (U.P.), Presently posted as School Teacher (TRE-2), Class -6 - 8 Subject Math and Science in Government Middle School, Bahuari, Block- Motihari, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
4. The Director (Secondary Education), Education Department, Government of Bihar, New Secretariat, Vikas Bhawan, Bailey Road, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
6. The Bihar Public Service Commission, through its Chairman 15, Jawaharlal Nehru Marg, bailey Road, Patna.
7. The Chairman, Bihar Public Service Commission, Bihar, Patna.
8. The Secretary, Bihar Public Service Commission, Bihar, Patna.
9. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bihar, Patna.
10. The District Education Officer, East Champaran at Motihari.
11. The District Programme Officer (Establishment), East Champaran at Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nityanand Mishra, Advocate Mr.Alok Abhinav, Advocate Mr.Abhishek Mishra, Advocate
For the BPSC	:	Mr.Sanjay Pandey, Advocate Mr.Nishant Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sanju Kumar, AC to Advocate General

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-03-2025

Re : Interlocutory Application No.1 of 2025



Heard Mr. Nityanand Mishra along with Mr. Alok Abhinav and Mr. Abhishek Mishra, learned counsels appearing on behalf of the petitioner; Mr. Sanjay Pandey along with Mr. Nishant Kumar Jha, learned counsel for the Bihar Public Service Commission and Mr. Sanjiv Kumar, learned AC to Advocate General.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:-

“For issuance of an appropriate writ in the nature of certiorari for quashing and set aside the Letter No.1341 dated 15.05.2024 (Annexure P/10) issued under the signature of the Director Secondary Education (Respondent No.4) by which it has instructed to all District Education Officers under the State of Bihar to not provide benefit of reservation to the candidates belonging from other state coming under the category of female and disabled at par with the candidates of said category of the State of Bihar in Central Teacher's Eligibility Test (hereinafter CTET) and also for quashing the Memo No.547 dated 31.01.2025 (Annexure P/11) issued under the signature of the Respondent no.11 whereby and whereunder the petitioner has been directed to submit show cause reply to the effect that she has obtained less than 60 % marks in CTET, therefore, her appointment is liable to be canceled, the aforesaid notifications are contrary to conditions laid down in the Advertisement No.27 of 2023 dated 04.11.2023(Annexure P/1) by which following the procedure, the petitioner has been appointed as School teacher, moreover, the said notifications are in teeth of a letter issued by the the then Director, Primary Education, Govt. of Bihar vide letter no.666 dated 13.07.2021 (Annexure P/14) in which female



candidates either of the resident of Bihar or other States have been put under same category, more so the show cause is in contravention of law laid down by the Hon'ble Supreme Court by which no discrimination can be made on the ground of place of birth or residence.

(ii) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondents concerned to not disturb the petitioner in smooth functioning of the Government School. The petitioner as school teacher working in her appointed school as she has been appointed in pursuant to conditions laid down in Advertisement No.27 of 2023 dated 04.11.2023 (Anneuxre P/1) and at point of time she has not concealed any fact during the entire selection process and after due verification by the competent authority she have been appointed as school teacher.

(iii) Further for direction to the respondents concerned not to make any employment/selection/appointment in pace of the selected petitioner as school teacher.

(iv) For any other relief/reliefs for which the petitioner is entitled to in accordance with law.”

3. During the pendency of the present writ petition, the District Education Officer, East Champaran, Motihari, vide Memo No.661 dated 07.02.2025 terminated the services of altogether eight school teachers including the petitioner, allegedly in accordance with the provision of **"Bihar Government Servants (Classification, Control and Appeal) Rules, 2005"** (hereinafter to be referred as the '**CCA Rules, 2005**') with immediate effect. The name of the petitioner



figures at sl. no.8 of memo dated 07.02.2025. All the above eight teachers were appointed on different dates, after having qualified the STET examination but they do not have the certificate to teach Class I to V.

4. Being aggrieved by the said order dated 07.02.2025, the learned counsel has prayed for addition of reliefs as prayed for in Paragraph No.1 of Interlocutory Application No.1 of 2025, which is *inter alia* reproduced hereinafter as follows : -

“(i) For quashing and set aside the Official Order issued vide Memo No.661 dated 07.02.2025 issued under the joint signature of the District Education Officers (DEO), Motihari and District Programme Officer (DPO) (Estt.), Motihari, (respondent no.10 and 11) respectively, whereby and whereunder the service of the petitioner has been terminated from the post of School Teacher, on erroneous ground and in most arbitrary manner, despite of filing the present writ application in which Show Cause has been challenged.

(ii) For granting stay the operation of the Official Order issued vide Memo No.661 dated 07.02.2025 issued under the joint signature of the District Education Officers (DEO), Motihari and District Programme Officer (DPO) (Estt.), Motihari, (respondent no.10 and 11) respectively, with effect from the date of issuance of said termination letter.

(iii) For further directing/commanding the respondent concerned to reinstate/continue the service of the petitioner on its original place with effect from the date of termination along with payment of salary and all consequential benefits.



(iv) For further directing/commanding the higher authority/respondent concerned to take legal action against the erring official/respondents who have terminated the service of the petitioner with mala fide despite of getting knowledge/information of the filing of the instant writ application.”

5. The relief(s), as prayed for in I.A. No.1 of 2025, is allowed and it is directed to be added in paragraph no.1 of the main writ petition, in addition to those already prayed by the petitioner.

Re : CWJC No.3887 of 2025

BRIEF FACTS

6. The petitioner is now aggrieved by order of termination contained in Memo No.661 dated 07.02.2025, in which her name appears at Sl.No.8. The service of the petitioner is governed by the Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules 2023 (hereinafter to be referred as the ‘Rules, 2023’) as amended from time to time.

7. It is admitted by the parties that the petitioner is resident of Uttar Pradesh and was appointed after having qualified in the open competition held for the appointment of teachers in different schools of the State of Bihar for teaching in the Primary school, Middle School, Elementary School



Secondary or Higher Secondary School. The Advertisement No.27 of 2023 has been brought on record by way of **Annexure 'P/1'**. The petitioner has claimed that she was having requisite qualification and she had applied for Class VI to VIII against the total vacancy of 31982 posts. The eligibility condition of appointment is laid down in Clause 2 of the advertisement, which specifically provides as follows : -

“2. शिक्षा विभाग के अन्तर्गत विद्यालय अध्यापक के पद पर नियुक्ति हेतु अनिवार्य अर्हता निम्नवत होंगी:-

(i) भारत का नागरिक हो।

(ii) विद्यालय अध्यापक के पद पर नियुक्ति हेतु राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा समय-समय पर निर्धारित शैक्षणिक एवं प्रशैक्षणिक योग्यता धारित करता हो। विशेष विद्यालय अध्यापक के लिए अर्हता भारतीय पुनर्वास परिषद् के अनुरूप अनुमान्य होगा।

(iii) राज्य सरकार अथवा केन्द्र सरकार द्वारा समय-समय पर आहूत शिक्षक पात्रता परीक्षा में उत्तीर्ण हो

यथा:-

(i) मध्य विद्यालय के अध्यापकों के लिए CTET Paper-II अथवा BTET Paper-II

(ii) माध्यमिक विद्यालय के अध्यापकों विशेष विद्यालय के अध्यापकों के लिए STET Paper-I एवं

(iii) उच्च माध्यमिक विद्यालय के अध्यापकों के लिए में STET Paper-II में उत्तीर्ण हों।

परन्तु वर्ष 2012 से पूर्व नियुक्त एवं कार्यरत शिक्षक, जो दक्षता परीक्षा उत्तीर्ण होंगे, के लिए शिक्षक पात्रता परीक्षा में उत्तीर्णता अनिवार्य नहीं होगी।

◆ शिक्षा विभाग के पत्रांक 582, दिनांक 17.06.

2023 के आलोक में स्पष्ट किया जाता है कि CTET अभ्यर्थियों के लिए BTET, 2017 के लिए लागू प्रावधानुसार सामान्य कोटि के अभ्यर्थी को न्यूनतम 60 प्रतिशत अंक, पिछड़ा वर्ग, अत्यंत पिछड़ा वर्ग एवं सामान्य कोटि की महिला उम्मीदवारों को 55 प्रतिशत अंक एवं अनुसूचित जाति/जनजाति तथा निःशक्त कोटि के उम्मीदवारों को 50 प्रतिशत अंक के आधार पर उत्तीर्ण माना जायेगा।

विद्यालय अध्यापक के पद पर नियुक्ति हेतु राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा समय-समय पर निर्धारित शैक्षणिक एवं प्रशैक्षणिक योग्यता धारित करता हो एवं विशेष विद्यालय अध्यापक के लिए



अर्हता भारतीय पुनर्वास परिषद् के अनुरूप अनुमान्य होगा, जो सम्प्रति निम्नवत है:-

(A) विद्यालय अध्यापक के लिए स्नातक कोटि (कक्षा 6-8):- मध्य विद्यालयों में स्नातक कोटि (6-8) के विद्यालय अध्यापक की विषयवार निम्न पद होंगे:-

(क) गणित एवं विज्ञान विद्यालय अध्यापक।

(ख) सामाजिक विज्ञान विद्यालय अध्यापक।

(ग) भाषा विद्यालय अध्यापक।

(i) नियुक्ति हेतु न्यूनतम शैक्षणिक एवं प्रशैक्षणिक अर्हता निम्नवत होगी:

स्नातक (विश्वविद्यालय अनुदान आयोग से मान्यता प्राप्त विश्वविद्यालय से प्राप्त डिग्री) और प्रारंभिक शिक्षा में द्विवर्षीय डिप्लोमा (चाहे जिस भी नाम से जाना जाता हो)

अथवा

कम-से-कम 50% अंकों सहित स्नातक या स्नातकोत्तर तथा बी0एड0

अथवा

न्यूनतम 45% अंकों के साथ स्नातक एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी0एड0) जो इस संबंध में समय-समय पर जारी किये गये राष्ट्रीय अध्यापक शिक्षा परिषद् मानरूता, मानदंड तथा क्रियाविधि विनियमों के अनुसार प्राप्त किया गया हो।

अथवा

न्यूनतम 50% अंकों के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं चार वर्षीय प्रारंभिक शिक्षा शास्त्र में स्नातक (बी0एल0एड0)

अथवा

न्यूनतम 50% अंकों के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं चार वर्षीय बी0ए0/बी0एससी0एड0 या बी0ए0एड0/बी0एससी0एड0

अथवा

न्यूनतम 50% अंकों के साथ स्नातक तथा एक वर्षीय बी0एड0 (विशेष शिक्षा)

अथवा

न्यूनतम 55% अंकों के साथ अथवा उसके समकक्ष ग्रेड के साथ स्नातकोत्तर और तीन वर्षीय एकीकृत बी0एड0-एम0एड0।

परन्तुक-

(ii) शिक्षा शास्त्र में डिप्लोमा (विशेष शिक्षा) एवं बी0एड0 (विशेष शिक्षा) के लिए केवल भारतीय पुनर्वास परिषद् (आरसीआई) द्वारा मान्यता प्राप्त पाठ्यक्रम मान्य होगा। ऐसी योग्यता प्राप्त अभ्यर्थियों को नियुक्ति के बाद प्रारंभिक शिक्षा शास्त्र में राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा मान्यता प्राप्त 6 माह का विशेष प्रशिक्षण प्राप्त करना आवश्यक होगा। संबंधित विद्यालय अध्यापक को इस प्रशिक्षण को पूर्ण करने हेतु 06 महीने



का सवैतनिक अवकाश मान्य होगा।

(iii) वर्ग 6-8 के भाषा विज्ञान के विद्यालय अध्यापक के लिए स्नातक स्तर पर प्रतिष्ठा (Hons.) / आनुषांगिक (Subsidiary) विषय के रूप में संबंधित भाषा पठित हो।

(iv) वर्ग 6-8 के सामाजिक विज्ञान के विद्यालय अध्यापक के लिए स्नातक स्तर पर इतिहास, भूगोल, राजनीति शास्त्र, दर्शन शास्त्र, अर्थशास्त्र, वाणिज्य, मनोविज्ञान, समाज शास्त्र, गृह विज्ञान में से कोई दो विषय स्नातक स्तर पर पठित हो।

(v) वर्ग 6-8 के गणित एवं सामाजिक विषय के लिए स्नातक स्तर पर गणित, भौतिकी, रसायन, जीव विज्ञान में से कोई दो विषय पठित हो।”

8. The petitioner has claimed that she had applied for Class VI to VIII in Mathematics and Science subject. The petitioner has also claimed that she has all the requisite qualification including the CTET examination qualification certificate and other training certificate as well.

9. It is the admitted fact that the petitioner was appointed for teaching Class VI to VIII, vide Memo No.8440001 dated 23.01.2024. The appointment letter contains declaration of the petitioner that in case the terms and conditions of the appointment is violated or is found incorrect, then in that case, the disciplinary action is required to be taken against her.

10. The petitioner is aggrieved by the action of the respondent taken, vide official order contained in Memo No.661 dated 07.02.2025 issued under the joint signature of the District Education Officer (DEO), Motihari and the District Programme



Officer (Establishment), Motihari communicating that the service of the petitioner has been terminated from the post of School Teacher.

ARGUMENT OF PARTIES

11. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had applied for appointment on the post of government school teacher, as per the conditions laid down in Advertisement No.27 of 2023 dated 04.11.2023. The clarificatory letter no.666 dated 13.07.2021 issued by the Director, Primary Education informing that Rule 9 (i) of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 provides that minimum 50 % women will be appointed and it further clarified that all the reserved female category candidates of the State and outside the State can be appointed. It is further case of the petitioner that there is no description regarding reservation, as per letter no.582 dated 17.06.2023, by which 60% marks is required for general category, 55% marks required for B.C./E.B.C./Female of general category candidate and 50% marks required for the disabled candidates. While the petitioner was working as School Teacher, in the meantime a writ application bearing CWJC No.3270/2024 was filed and after hearing the parties, this



Hon'ble Court was pleased to pass order dated 01.04.2024 with a direction to the Director, Secondary Education (respondent no.4) to dispose of the representation within eight weeks. Learned counsel further submitted that in compliance of order dated 01.04.2024 passed in CWJC No.3270 of 2024, the Director, Secondary Education (respondent no.4) issued a reasoned order, vide Memo No.1341 dated 15.05.2024 communicating to all District Education Officers under the State of Bihar, mentioning therein that the candidates out of Bihar would not be given relaxation in marks, therefore, only those candidates having 60 % marks in CTET would be continued in service, in case she (female) have less than 60 % marks in CTET she would not be treated as qualified to be appointed as school teacher, similar stands has been taken with respect to disabled candidates and in place of 50 % qualifying marks, 60 % qualifying marks have been fixed as eligibility criteria for CTET.

12. In the above background, the learned counsel further contended that vide notification i.e. Letter No.1341 dated 15.05.2025 of the Director, Secondary Education, Bihar, Patna and Letter No.1928 dated 04.11.2024, the District Programme Officer (Establishment), East Champaran, Motihari



issued a show cause order vide Memo No.547 dated 31.01.2025 by which show cause was sought for from the petitioner mentioning that the petitioner being a female has less than 60 % marks in CTET, therefore, she is not eligible to be continued as school teacher, hence, her appointment is required to be cancelled. Learned counsel is claiming that in the appointment made pursuant to the advertisement, no further condition can be imposed, in view of the settled law laid down by the Apex Court.

13. Learned counsel further submitted that in the facts of the case the order of termination can not be sustained in the light of the judgment passed by the Hon'ble Supreme Court in the case of ***Kailash Chand Sharma vs. State of Rajasthan and Others*** reported in **(2002) 6 SCC 562** and also on the ground that the Chairman of the Bihar Public Service Commission has been given information on 17.01.2023 that the Female and Disabled Candidates (outside the State) would be given horizontal reservation at part with the benefit of reservation given to the general candidate of female and disabled. On these grounds, the learned counsel submitted that the petitioner, who has already been appointed can not be terminated without following the due process of law and the law laid down by the



Apex Court.

14. The learned counsel further submitted that the show cause contained in Memo No.547 dated 31.01.2025 issued under the signature of the respondent no.11, the District Education Officer is contrary to the terms and conditions of appointment and eligibility criteria laid down in the Advertisement dated 27 of 2023 dated 04.11.2023. It is further contended that after the petitioner has been appointed as a school teacher, her service is governed by CCA Rules, 2005. The petitioner has been terminated without following the due process of law and the procedure prescribed under CCA Rules, 2005 by a common order contained in Memo No.661 dated 07.02.2025 can not be sustained in the eye of law.

15. On these grounds, the learned counsel submitted that the respondent no.11 has without jurisdiction proceeded to terminate the petitioner. Learned counsel further submitted that the prescribed procedure as contained in CCA Rules, 2005 and the conditions stipulated in the appointment letter has not been followed and in support he has relied on the law laid down by the Apex Court in the case of ***Dr. Tanvi Behl Vs. Shrey Goel & Ors. (Civil Appeal No.9289 of 2019)*** and ***Dr. Pradeep Jain Vs. Union of India*** reported in ***(1984) 3 SCC 654*** to substantiate



that the action is contrary to the constitutional provisions.

16. *Per contra* learned counsel appearing on behalf of the State submitted that the petitioner was found to be candidate of general category (woman) and as per the terms and conditions of the advertisement for appointment to the post of Teacher to teach Mathematics and Science subject of Class VI to VIII, minimum 90 marks is required while the petitioner has obtained only 86 marks. The claim of the petitioner is that she comes under the category of 'woman' of general category and in the light of the Education Department Letter No.582 dated 17.06.2023, she was required minimum qualifying marks of 55%, which is not sustainable in the light of the government notification contained in the said memo dated 17.06.2023. In the light of clarification made by the Director, Secondary Education, Bihar contained in Memo No.134 dated 15.05.2024, minimum 60 % marks has been announced as minimum qualifying marks for women, who are from the outside the State belonging to the general category, as per the Regulation No.3 of 1992 and in the light of the said notification, the petitioner has rightly been terminated from the service for having not fulfilled the said condition, as well as, it is also stipulated that only those candidates having 60 % marks in CTET/STET would be



continued in service, accordingly, the service of the petitioner has rightly been terminated in terms of the communication contained in letter No.582 dated 17.06.2023, therefore, no interference is required by this Court.

ANALYSIS AND CONCLUSION

17. Heard the parties.

18. The law in regard to the reservation and the grant of reservation in service is *no more res integra* . The mandate of Constitution does not provide any discrimination insofar as the domicile is concerned and the domicile has been understood that there is only one domicile in India, which is referred to the “domicile in the territory of India” as contained in Article 5 of the Constitution of India. Article 15 and 16 also do not discriminate any citizen on the ground of residence. Under Clause 3 of Article 16 enables only the Parliament to make a law prescribing a requirement of residence for state employment. The Apex Court while dealing with the case relating to resident based reservation in Post Graduate (PG) medical courses by the State is constitutionally valid in the case of *Dr. Tanvi Behel V. Shrey Goel & Ors. [Civil Appeal No.9289 of 2019]* along with the other civil appeals has observed in *Paragraph no.27 inter alia* as follows : -



“27. It was ultimately decided that residence cannot be a ground for discrimination in matters relating to employment, but in situations which necessarily demand prescription of residence within any State or UT as an essential qualification, it should be the Parliament (and not State legislatures) which should be empowered to make a law for that purpose, so that there is a uniformity throughout India on this.”

19. The Apex Court has heavily relied on the reasoning given in the case of ***Pradeep Jain V. Union of India*** reported in ***(1984) 3 SCC 654*** and concluded that the State which spends money on creating infrastructures and bears the expenses for running a medical college, therefore, some reservation at the basic level of a medical course i.e. MBBS can be permissible for the residents of that State. The classification between residents and others was justified by the Apex Court in respect to maintain a balance and it also consider the local needs, backwardness of the area, the expense borne by the State in creating the infrastructure etc. The Apex Court finally concluded that in the said background, the benefit of reservation in educational institutions including the medical colleges to those who reside in particular State can be given to a certain degree only in MBBS course and finally held in Paragraph Nos. 32, 33 and 34 as follows : -

*“32. The law laid down in **Jagadish Saran and Pradeep Jain** has been followed by this Court in*



*a number of decisions including the Constitution Bench decision in **Saurabh Chaudri**. We may also refer here judgments such as **Magan Mehrotra and Ors. V. Union of India (UIO) and Ors. (2003) 11 SCC 186, Nikhil Himthani Vs. State of Uttarakhand and Others (2013) 10 SCC 237, Vishal Goyal and Others V. State of Karnataka and Others (2014) 11 SCC 456 and Neil Aurelio Nunes (OBC Reservation) and Others V. Union of India and Others (2022) 4 SCC 1**, which have all followed **Pradeep Jain**. Thus, residence-based reservations are not permissible in PG Medical courses.*

33. Having made the above determination that residence-based reservation is impermissible in PG Medical courses, the State quota seats, apart from a reasonable number of institution-based reservations, have to be filled strictly on the basis of merit in the All-India examination. Thus, out of 64 seats which were to be filled by the State in its quota 32 could have been filled on the basis of institutional preference, and these are valid. But the other 32 seats earmarked as U.T. Chandigarh pool were wrongly filled on the basis of residence, and we uphold the findings of the High Court on this crucial aspect.

34. We make it clear though that our declaration of impermissibility of residence-based reservation of PG Medical courses will not affect such reservations already granted, and students are undergoing PG courses or have already passed out in the present case, from Government Medical College, Chandigarh. We do this simply because now there is an equity in favour of such students who must have already completed the course. Logically, therefore, the present appellants who were granted admission under the residence category and were undergoing their course, & also by virtue of the interim order of this Court dated 09.05.2019, will not be affected by our judgment.”

20. The aforesaid judgment is applicable in the case of reservation in educational institution like in respect of MBBS



course and not to the facts of the present case. In the case of ***Dr. Pradeep Jain Vs. Union of India*** reported in ***(1984) 3 SCC 654***, the Apex Court has not dealt with the reservation and violation of Article 16 of the Constitution of India in any manner in context of the employment under the State. In this regard categorically the Apex Court in paragraph no.28 has held that ***“Article 16 does not speak of residence but then it is in the context of employment under a State, with which we are not presently concerned. Yet the residence requirement has still to pass muster Article 14 of the Constitution of India.”***

21. In the present case, the petitioner has been terminated by the District Education Officer, who has followed the directions of the Director, Secondary Education contained in Memo No.1341 dated 15.05.2024, which provides for the minimum 60 % marks for general category women candidates of outside the State while 55 % marks to the women belonging to general category on domicile basis in accordance with the Regulation No.3 of 1992, which is for reservation for Scheduled Caste and Scheduled Tribe Candidates. Article 14 provides that the State shall not deny to any person equality before law or equal protection of law within the territory of India. Article 15 provides that the State shall not discriminate against any citizen



on the grounds of religion, race, caste, sex, “place of birth” or any of them. Clause 3 of Article 15 of the Constitution of India empowers the State to make any special provision for women and children. The said Clause reads as under :

“15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.”

22. A query has been made from the learned State counsel, as to whether, the Regulation No.3 of 1992 fulfills the mandate of Article 16 (3) of the constitutional requirement but the learned counsels have failed to reply the same. However, I find that the State Government extended 35 % reservation for all government jobs in Bihar for which direct recruitment is made, vide notification No.163 dated 20.01.2016 and notification No.2342 dated 15.02.2016.

23. Reservation on the basis of domicile in the matter of public employment in the State was a subject matter before the Division Bench of this Court in ***CWJC No.15153 of 2008 (Khichri Ram vs. The State of Bihar)*** & other cases, wherein the issue was whether the scheduled caste category candidates belonging to other State, who were initially recruited against the vacancies reserved for the members of the scheduled castes, all of them were promoted to the higher post on the vacancies



reserved for scheduled castes after 11.06.1996 was in accordance with ***“Bihar Reservation of Vacancies in Posts and Services (For Scheduled Classes, Scheduled Tribes and Other Backward Classes) Act, 1991 (Bihar Act 3 of 1992)”***. Dealing with the different provisions of the Act and the constitutional provisions contained in Articles 14, 15 and 16 of the Constitution, particularly promotion granted outside the State in view of Article 16 (4)(A) of the Constitution of India, this Court held that the decision of the State Government, insofar as, giving benefit of reservation to such persons of reserved category, who are native of Bihar communicated, vide letter dated 11.06.1996 can not be considered to be in conformity with the law laid down by the Hon’ble Supreme Court in the case of **Indra Swaini Sawhney & Ors vs. Union of India & Ors** reported in **(1992) Supp. (3) SCC 217** and negated the argument advanced on behalf of the petitioner. The Division Bench clarified that the members of the scheduled castes belonging to this state (Bihar) and those belonging to other State constitute different class. The Division Bench further clarified that the ***“Distinction exists between the place of birth and the residence. Although the discrimination is not permissible on the ground of place of birth but certainly nothing prohibits***



discrimination on the grounds of residence". By relying upon a decision of the Hon'ble Supreme Court in the case of *Pradeep Jain (supra)*, the Division Bench further proceeded to hold that "*In respect of State public services, the legislature of the State has the power to make law in this regard under Entry 41 of List II of the Seventh Schedule of the Constitution. In that view of the matter, it can not be said that the State Legislature has no power to make law in this regard. As such, it can not be said that the enactment or the proviso under challenge is beyond the legislative competence of the State Legislature.* As the members of the scheduled caste are adversely affected by the order of reversion, a challenge was also made on the ground of equity and violation of right granted under Articles 16, 311 and 311 (2) of the Constitution of India. The Division Bench held that Article 311 of the Constitution of India covers reversion on any ground.

24. Reservation for women can only be considered in that case as horizontal reservation for women candidates irrespective of their "domicile" or "place of residence". In this regard, I find gainful to refer to judgment of the Apex Court passed in the case of "*Government of A.P. v. P.B. Vijayakumar and another*" (1995) 4 SCC 520. The mandate of Article 16 (2)



of the Constitution of India refers to both “domicile” and “residence” apart from the “place of birth” and the Apex Court has clarified that the distinction has been made by the makers of the Constitution themselves. The expression “place of birth” is not synonyms to the expression ‘domicile’ and they reflect two different concepts. Faced with the similar situation in respect of the reservation for rural people was a ground for reservation taking into consideration socially and educationally backwardness of the citizens, the Hon’ble Supreme Court in the case of “*State of Uttar Pradesh v. Pradip Tandon and others*’ (1975) 1 SCC 267 has discussed the issue in detail. Recently, the Division Bench of this Court in the case of *Karnika Shekhar vs. The State of Bihar & Ors.*, vide judgment dated 26.02.2024 passed in *CWJC No.22609 of 2019* faced with the similar situation after taking note of the facts of the said case *inter alia* in **Paragraph Nos.3, 4, 5 and 6** has passed following orders :

“3. The writ petition avers that because of there being serious ambiguity in the policy of the State of Bihar regarding horizontal reservation for women, there is not only a loss for the women of unreserved category of the State of Bihar, but it is big loss for the meritorious girls of other reserved category also, because if the quota of women of unreserved category would have been reserved for the women of Bihar only, the meritorious women of all other classes would have been made their



space in open category, but due to excessively high competition of the women of other States, women of this State found themselves standing with empty hands. The writ petition further discloses that because of ambiguity, the basic purpose for which 35% horizontal reservation was given to the women is being frustrated and on one hand where all States have clearly prohibited the women of other State to enter into their women quotas reserved to the women of the respective States and on another hand State of Bihar is generous enough to distribute the reserved seats for women among the women of other States.

4. Learned Government Advocate referring to the Resolution No. 963 dated 20.01.2016 issued by the General Administration Department, Government of Bihar submitted that the representation of the women of this State in the different reserved categories is admissible to the candidate, who is the permanent resident of the State of Bihar. He next contended that while making the amendment of Section 4 of the Bihar Reservation of Vacancies in Posts and Services for Scheduled Castes, Scheduled Tribes and Other Backward Classes (Amendment) Act, 2003 by incorporating proviso to Sub-Section 2 of Section 4 of the said Act, it has been provided that the candidates residing out of the State of Bihar shall not claim for benefits of reservation under this Act.

5. Adverting to the aforesaid decision of the State Government, it is also stated that 40% reservation for unreserved category and an open merit category against which a candidate from the State of Bihar or any State may be selected against 40% seats/vacancies of open merit categories, so that merit may not be denied.

*6. We cannot but notice **Kailash Chand Sharma Vs. State of Rajasthan & Ors.; (2002) 6 SCC 562** from which para 13 and 14 are extracted hereunder:*

“13. Before proceeding further



we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself — be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief



analysis of Article 16.

14. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied article — Article 15 — the word “residence” is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilute the rigour of clause (2) by (i) conferring an enabling power on Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State, and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the article. Here, we should make note of two



things : firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression “only”.

25. The challenge to Resolution No.963 dated 20.01.2016 issued by the General (Administration) Department, Government of Bihar and the amendment brought in the year, 2006 in Section 4 of Bihar Reservation of Vacancies (Amendment) Act, 2003 by incorporating proviso to Sub Section 2 of Section 4 of the said Act, by which it has been provided that the candidates, who are residing out of State of Bihar, shall not claim for the benefit of reservation under the said Act has not been challenged in the present writ petition and



in absence of any information in this regard, I find it proper that the same requires to be examined independently in an appropriate case.

26. Now coming to the fact whether the order of termination contained in Memo No.661 dated 07.02.2025 otherwise can also be sustained in the eye of law. The provisional appointment letter dated 13.01.2024 contains eight terms and conditions, which don't relate in any manner to take disciplinary action against the candidate, however, the said provisional appointment letter mandatorily requires a selected candidate to self-declare that in case of any incorrect information, the disciplinary action is required to be taken in accordance with the "*Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023*", which requires action to be taken in accordance with the provisions of '**CCA Rules, 2005**'. The provision of Rule 14 (II) CCA Rules, 2005 prescribes for punishment. Rule 16 mandates for approval of the Government, before initiation of the disciplinary action. Rule 17 prescribes the procedure for holding of disciplinary inquiry in accordance with the provision of Article 311 of the Constitution of India.

27. It is admitted that the appointment of the



petitioner is provisional in nature. The petitioner was appointed on 16.02.2024 and she was receiving her salary regularly till the date of her termination i.e. on 07.02.2025.

28. It is well settled that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “*inscrutable face of a sphinx*”.

29. In **A.K. Kraipak Vs. Union of India** case reported in (1969) 2 SCC 262, it was held that the rules of natural justice operate in an area not covered by any law. They do not supplant the law of the land but supplement. it. In the present case, the letter of appointment gives information that the disciplinary action is required to be taken in accordance with CCA Rules, 2005.

30. In **Union of India etc. vs. Tulsiram Patel etc.** case reported in (1985) 3 SCC 398, the Apex Court took the view that *audi alteram partem* rule can be excluded where a right to a prior notice and an opportunity of being heard, before an order is passed, would obstruct the taking of prompt action or where the nature of the action to be taken, its object and purpose as well as the scheme of the relevant statutory provisions warrant its exclusion. This legal proposition was further



expanded in the case of *Delhi Transport Corporation vs Delhi Transport Corporation Mazdoor Congress* reported in (1991) *Supp SCC 600*, wherein the Apex Court held that rule of *audi alteram partem* can be excluded, where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions, fairness in action does not demand its application and even warrants its exclusion.

31. In *Kranti Associates (P) Ltd. & Ors. vs. Masood Ahmed Khan & Ors.* reported in (2010) 9 *SCC 496*, the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Apex Court has summarized the principle in Paragraph No.47 of the judgment as under : -

“47. Summarising the above discussion, this Court holds :

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid



restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "*rubber-stamp reasons*" is not to be equated with a valid decision-making process.



(m) It can not be doubted that transparency is the since qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 Para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “*adequate and intelligent reasons must be given for judicial decisions*”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of ‘*due process*’.”

32. In the case of *State of Punjab & Ors, Vs. Sukhwinder Singh* reported in (2005) 5 SC 569, the Apex Court in *Paragraph No.19* even in case of *ad hoc* or temporary employees has observed as follows :-

“19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact-finding inquiry is made, wherein the employee is either given an



opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry “for the purpose of imposing punishment” and an order of discharge or termination of service as a result thereof “punitive in character”, the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong.”

33. The Apex Court following the law laid down in ***Purushottam Lal Dhingra vs. Union of India*** reported in 1957 ***SCC Online SC 5*** in case of ***Swati Priyadarshini vs. the State of Madhya Pradesh & Ors. (Civil Appeal No.9758 Of 2024 Arising Out of Special Leave Petition (C) No.11685 of 2021)*** has held that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the



same could not have been passed without holding a regular enquiry and the termination order could not have been passed without giving an opportunity of being heard and in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311.

34. It is well settled law that the action taken by an authority having no jurisdiction is *void*. In the present case, the action has been taken by the District Education Officer, who has no jurisdiction to issue the show cause notice. There is no reference that any approval was obtained from the State Government, even though, the appointment of the petitioner is a provisional appointment, any action to impose major penalty requires fulfillment of Article 311 (2) of the Constitution of India, which is mandatory.

35. As I have not interfered with the Resolution No.963 dated 20.01.2016 and the Amendment Act, 2003, I do not need to go into the aspect that the requirement of Article 15 (3) or 16(3) of the Constitution of India has not been fulfilled.

36. In view of the discussions made hereinabove and the law laid down by the Apex Court, the show cause contained



in Memo No.547 dated 31.01.2025 and in furtherance of the said show cause, order of termination contained in Memo No.661 dated 07.02.2025 can not be sustained in the eye of law and the same are hereby set side and quashed.

37. The Additional Chief Secretary, Education Department, Government of Bihar is directed to take corrective action in accordance with law.

38. The writ petition is accordingly disposed of.

39. There shall be no order as to costs.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.04.2025
Transmission Date	NA

