

C.A. 6
2/5/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction Case)

C.W.J.C.No. /2013

Umesh Kumar petitioner

Versus

The State of Bihar and others Respondents

Subject: Promotion School
Service
Gr-II (ii)
INDEX

<u>Sl.No.</u>	<u>particulars</u>	<u>Pages</u>
1.	Synopsis	I to II
2.	An application with Affidavit	1- 9
3.	Annexure-1: A true photo copy of letter dated 31.3.13	10-12
4.	Annexure-2: Photo copies of order dated & 2/A 7.10.09 passed in CWJC No. 10461/2009 and order of Director dated 24.4.09	13-15
5.	Annexure-3 & 3/A: Photo copies of representation dated 31.3.2013 and Legal Notice dated 12.4.13	17-19
6.	Vakalatnama	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C.No.

/2013

Umesh Kumar

.... Petitioner

Versus

The State of Bihar and others Respondents

SYNOPSIS

This application is being filed for quashing of the letter dated 31.3.13 vide Memo No. 86 issued by seal and signature of Principal District Education and Training Institute Madhepura whereby and where under the private respondent no.10 who is lesser qualification than the petitioner have been granted promotion on the post of Block Resources Centre Co-ordinator.

List of Date and Events:

2008

The petitioner was appointed as Block Resources Centre Co-ordinator in subject of Mathematics science.

On 12.3.13 The petitioner again applied for the same post and

II.

selected the private respondent no.10 and departed the petitioner.

31.3.2013 The petitioner filed representation and legal notice dated 12.4.13 before the Principal District Education & Training Institute Madhepura. regarding ~~sakam~~ selection on the post of Block Resources Centre Co-ordinator. But till date no action has been taken by the respondent authorities.
Hence this writ petition.

COURT FEE



Rs. 0000285

25.4.2013

375459

BIHAR

Authorization No 2675

INDIA

Zero*Zero*Zero*Zero*Two*Eight*Five*

2953 523603
2953 5552

Court Fee

Stamp on Vakalatnama

Stamp on Affidavit

Other Fees

Rs. 250/-
Rs. 20/-
Rs. 25/-
Rs. _____

Filed through
K. Vishal Kumar
A.O.P.
25/4/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C.No.

of 2013

P-1 to 9

A-10 to 19

Audits Mukheyee
26/4/13

In the matter of an

application under Article

226 of the Constitution of

India.

And

In the matter of:-

Umesh Kumar S/o Shaligram Mandal, Resident of Village-
Jogwani, P.O. Bhawanipur, P.S. Gamharia, Distt. Madhepura
At present posted as Assistant teacher in Shyam Middle
School Jogwani, P.S. Gamharia, Distt. Madhepura.

..... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary,
Department of Human Resources Govt. of Bihar, Patna.
2. The Director Primary Education Govt. of Bihar, Patna.
3. The Director, Research and Training, Govt. of Bihar,
Patna.
4. The Regional Deputy Education Director, Koshi Division,
Saharsa.
5. The Principal District Education & Training Institute
Madhepura.
6. The Secretary District Education & Training Institute-
cum-District Programme Officer, Primary Education,
Madhepura.
7. The District Programme Officer-cum-Secretary Promotion
Committee, Madhepura.
8. The Block Education Officer-cum-Drawing & Disbursing
Officer, Gamharia, Madhepura.
9. The Headmaster Shiyaram Middle School Jogwani, P.S.
Gamharia, Dist. Madhepura.

10. Ashok Kumar Mehta, S/o Late Ghuran Mehta, Resident
of Village Tok Sihpur, P.S. Gamharia, Distt. Madhepura
At present posted as Assistant Teacher in Deo Nr.
Mandal Middle School Toka Gamharia, Dist. Madhepura.

..... Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief
Justice of the High Court of Judicature at Patna
and Her companion justices of the said Hon'ble Court.

The ~~hm~~ humble petition on behalf
of the petitioner named baove.

Most Respectfully Sheweth:-

1. That this is an application for issuance of
writ in the nature of certiorari to quash the letter
dated 31.3.2013 vide memo no. 86 issued by seal and
signature of Principal District Education and Training
Institute Madhepura whereby and where under the

private respondent no. 10 who is lesser qualification than the petitioner have been granted promotion on the post of Block resources centre co-ordinator.

2. That the following question of laws are involved in this writ petition which are as follows:-

- (i) whether petitioner has higher qualification than the respondent no. 10?
- (ii) whether the petitioner has M.Sc. and physical trained?
- (iii) whether there is violation of Article 14 and 16 of the Constitution of India?

3. That the petitioner is a citizen of India and residing within the territorial jurisdiction of this Hon'ble Court.

4. That it is relevant to mention here that the petitioner was appointed as Block Resources Centre Co-ordinator in 2008 in subject of Mathematics , science

and again applied for the same post on 12.3.12 and selected the private respondent no. 10 and departed the petitioner.

A true photo copy of letter dated 31.3.13 is being annexed herewith and marked as Annexure-1 to this petition.

5. That it is relevant to mention here that petitioner is M.Sc. physical trained and also one year service. in training where as private respondent no.10 is only B.Sc. trained.

6. That petitioner qualification is higher than the private respondent no.10.

7. That as per the different high court order and Govt. order physical trained is equivalent to General trained.

A true photo copy of the

order dated 7.10.09 is passed
in CWJC No. 10461/2009 and
order of Director dated 24.4.09
is being annexed herewith and
marked as Annexure-2 & 2/1 to
this petition.

8. That it is relevant to mention here that
petitioner filed representation on 31.3.13 and legal
notice on 12.4.13 before the Principal District
Education & Training Institute Madhepura regarding
solemn on the post of Block Resources Centre Coordinator.

A photo copy of the
representation dated 31.3.2013
and 12.4.13 is being annexed
herewith and marked as
Annexure- 3 & 3/A to this
petition.

9. That it is relevant to mention here that letter dated 31.3.13 was issued in arbitrary manner ignoring the claim of the petitioner and different High Court order and order of Director Secondary Education.

10. That the petitioner has not removed earlier before this Hon'ble Court and he has come for the first time in this regard.

11. That the petitioner has no other ~~aktars~~ alternative or efficacious remedy except to move before this Hon'ble Court.

It is, therefore, prayed that a your Lordships may graciously be pleased to admit this application ~~xxx~~ issue Rule NISI calling upon the respondents and after hearing the parties further be pleased to allow

1
2

-8-

a reliefs sought in paragraph no.1 of
the writ petition.

And/or

During the pendency of the writ
petition operation of letter dated
31.3.13 may be stayed.

And/or

Pass such other order/orders as your
Lordships may deem fit and proper.

And for this the Petitioner shall ever pray.

8



A F F I D A V I T

I, Umesh Kumar aged about 53 yrs, S/o Shakiga Shaligram Mandal, R/o Village- Jogwani, P.O. Bhawanipur, P.S. Gamharia, Dist. B Madhepura at present posted as Assistant teacher in Shyaram Middle School Jogwani, P.S. Gamharia, Dist. Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such well acquainted with the facts and circumstances of this case.

2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same.

3. That the statements made in paragraph nos. 1, 3, 5, 6, 9 & 11 are true to my knowledge and those made in paragraph nos. 4, 7 & 8 are based on my information derived from the records and rest are by way of submission before this Hon'ble Court.

4. That the Annexures are photo copies of their respective originals.

Solemnly affirmed before me
..... U. Kumar
Who is identified by U.P. Yadav etc
I have satisfied myself by examining the deponent that he understand the contents of the affidavit which has been read to him and explained to him and that he acknowledges to be correct. Dated the 26/4/13

14398

उमेश कुमार
26/4/13
Identity for the Deponent
U.P. Yadav etc to Mr. S.P. Singh
C.A. Advocate. P.H. 2

Anandits Mukherjee
Advocate Oath Commission
High Court

R.N. 900/2013
26/4/2013

-10-

Annexure - 1

कार्यालय—जिला शिक्षा एवं प्रशिक्षण संस्थान, मधेपुरा।

कार्यालय—आदेश

निदेशक, शोध एवं प्रशिक्षण, शिक्षा विभाग, विहार, पटना के ज्ञानांक 87 दिनांक-18.02.2013 के विभागगत मार्गदर्शिका अनुसार, प्रखण्ड संसाधन केन्द्र एवं संकुल संसाधन केन्द्र समन्वयक के चयन हेतु प्रख्यात जिला शिक्षा एवं प्रशिक्षण संस्थान, मधेपुरा की अध्यक्षता में दिनांक 20.03.2013 को आयोजित चयन समिति का बैठक में लिये गए निर्णयानुसार निम्नलिखित शिक्षक/शिक्षिका का चयन प्रखण्ड संसाधन केन्द्र समन्वयक के पद हेतु किया जाता है।


चयनित शिक्षक/शिक्षिका के नियुक्ति/शैक्षणिक/प्रशिक्षणिक प्रमाण-पत्रों में त्रुटि अथवा अन्य कोई त्रुटि प्रकाश में आए पर उनके चयन मुद्दा करने हुए उनके विरुद्ध आशयक कार्रवाई की जायेगी।

क्र०सं०	प्रखण्ड का नाम	वैषय का नाम	चयनित शिक्षक/शिक्षिका का नाम	पदस्थापित वि० का नाम	अभ्युक्ति
01	मधेपुरा	1. भाषा	सुभाषचंद्र देव	प्र०वि०सिंहगंज कामत, मधेपुरा	
		2. गणित/विज्ञान	भवेशानंद भारती	उ०म०वि०कारु टोला, मधेपुरा	
		3. सामाजिक विज्ञान	अमलेश कुमार	म०वि० बालम गढ़िया, मधेपुरा	
02	सिंहेश्वर	1. भाषा	समीन कुमार नूतन	उ०.म०वि० भेलवा सिंहेश्वर	
		2. गणित/विज्ञान	शिवना० देव	म०वि० भवानीपुर सिंहेश्वर	
		3. सामाजिक विज्ञान	श्याम कुमार	म०वि० तरहा, डंडारी, सिंहेश्वर	
03	शंकरपुर	1. भाषा	अरवि कुमार रंजन	उ०म०वि० अरवाहा शंकरपुर	
		2. गणित/विज्ञान	कौशल कुमार	उ०म०वि० मौजना शंकरपुर	
		3. सामाजिक विज्ञान	अरविन्द कुमार	उ०म०वि० गोरसाहा शंकरपुर	
04	कुमारखंड	1. भाषा	इरान कुमार	म०वि० रहट कुमारखंड	
		2. गणित/विज्ञान	वैशाली प्रसाद यादव	उ०म०वि०इसर ईन गोठ, कुमारखंड	
		3. सामाजिक विज्ञान	अरविन्दकुमार सिंह	म०वि० केवटगाना कुमारखंड	



क्र०सं०	प्रखण्ड का नाम	विषय का नाम	चयनित शिक्षक / शिक्षिका का नाम	पदस्थापित वि० का नाम	अभ्युक्ति
05.	मुरलीगंज	1. भाषा	संजय कुमार	उ०म०वि०दिग्धी मुरलीगंज	
		2. गणित / विज्ञान	दीनेन्द्र प्र० मेहता	म०वि०तिनकोनमा मुरलीगंज	
		3. सामाजिक विज्ञान	अरुण कुमार	उ०म०वि० राजपुतटोला तमौट परसा	
06.	आलमनगर	1. भाषा	सियाराम मोची	उ०म०वि० अठगामा बासा, आलमनगर	
		2. गणित / विज्ञान	सुदर्शन झा	उ०म०वि० बैसी वासा, आलमनगर	
07.	चौसा	1. भाषा	तेजनरायण मंडल	प्रा०वि०सोनवर्षा चौसा	
		2. गणित / विज्ञान	प्रभाष कुमार यादव	म०वि०चिरौडी चौसा	
		3. सामाजिक विज्ञान	संजीव कुमार	प्रा० वि० सोनवर्षा चौसा	
08.	उदाकिशुनगंज	1. भाषा	शंभू नाथ मंडल	उ०म०वि० बाड़ाटेनी मंडल टोला उदाकिशुनगंज	
		2. गणित / विज्ञान	धर्माकिशोर कशरी	उ०म०वि० विन्दटोली उदाकिशुनगंज	
		3. सामाजिक विज्ञान	कन्देश्वरी कुमार	उ०म० वि० बाराटेनीमंडल टोला उदाकिशुनगंज	
09.	ग्वालपाड़ा	1. भाषा	अमेरिका कुमारी	उ०म०वि० कोकोग्वालपाड़ा	
		2. गणित / विज्ञान	विद्यानंद यादव	म०वि० सरसंडी ग्वालपाड़ा	

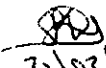
क्र०सं०	प्रखंड का नाम	विषय का नाम	चयनित शिक्षक / शिक्षिका का नाम	पदस्थापित वि० का नाम	अभ्युक्ति
10	घैलाढ़	1. सामाजिक विज्ञान	चंदेश्वरी प्र० यादव	आदर्श म०वि०भानू, घैलाढ़	
11.	गम्हरिया	1. भाषा	आभा कुमारी	उ०म०वि०टोका गम्हरिया	
		2. गणित / विज्ञान	अशोक कुमार मेहता	देवना० मंडल म०वि० टोका, गम्हरिया	
		3. सामाजिक विज्ञान	पुष्पा कुमारी	उ०म०वि० टेरही गम्हरिया	
12.	बिहारीगंज	1. गणित / विज्ञान	युगेश्वर नायक	उ०.म०वि० रामगंज बिहारीगंज	
		2. सामाजिक विज्ञान	बैद्यनाथ राम	उ० उर्दू म०वि० कुस्थन बिहारीगंज	


31/03/13
प्राचार्य

जिला शिक्षा एवं प्रशिक्षण संस्थान
31/3/13 मधेपुरा।

ज्ञापांक 86 / दिनांक 31-3-13

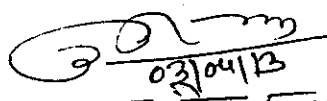
प्रतिलिपि- संबंधित प्रखंड शिक्षा पदाधिकारी/ संबंधित प्रधानाध्यापक/ चयनित सभी शिक्षक-शिक्षिकाओं को प्रेषित एवं निर्देश दिया जाता है कि एक सप्ताह के अंदर जिला शिक्षा एवं प्रशिक्षण संस्थान मधेपुरा में योगदान देना सुनिश्चित करेंगे।


31/03/13
प्राचार्य

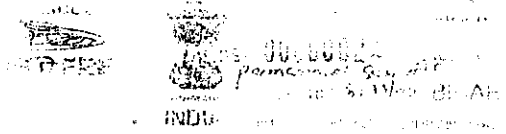
जिला शिक्षा एवं प्रशिक्षण संस्थान
31/3/13 मधेपुरा।

ज्ञापांक 212 / गम्हरिया, दिनांक - 04.04.2013

प्रतिलिपि :- सभी सम्बन्धित प्रधानाध्यापक/चयनित सभी शिक्षक/शिक्षिका को अनुपालनाय प्रेषित।


03/04/13
प्रखंड शिक्षा पदा०
गम्हरिया

Annexure - 9 28/11/09 - 107-13



IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.10461 of 2009
SHIV NANDAN YADAV DIWAKAR
Versus
THE STATE OF BIHAR & ORS

For the petitioner:- Mr. Amarnath Iha, Advocate
For the State:- Government Pleader No.16
Heard counsel for the petitioner and the Counsel appearing

7.10.2009

for the state.

Petitioner has filed this application for quashing the order dated 16.6.2008 issued under the signature of the Regional Deputy Director, Koshi Division, Saharsa vide GYADANK No. 10461/09 whereby the respondent no.8 has been considered as senior most teacher in the school and a direction has been issued to transfer the respondent no.8 to the school. Petitioner prays that the respondent no.8 be considered as senior most teacher in the school, since the respondent no.8 was in charge Headmaster, he was handed over the charge of the school as Headmaster and successfully discharging his duties in the capacity of Incharge Headmaster. The subsequent order issued by respondent no.8 removing the petitioner from the post and declaring respondent no.8 as senior teacher is illegal and arbitrary as he is not entitled to discharging the duty of Incharge Headmaster. The order should be set aside as such fit to be quashed.

A supplementary affidavit has been filed by the petitioner along with which an order passed by the Director, Secondary Education has been brought on record. This order has been issued by the Director, Secondary Education in the light of the order of the Hon'ble Justice in the case of CWJC No. 12374 of 2009; Janardan Singh Vs. State of Bihar.

the matter was remanded to the Director, Secondary Education for consideration whether a physically trained teacher whose name is higher in the seniority list, can be made Incharge Headmaster or ignoring his seniority the teacher who is general trained teacher should be treated as senior to the physically trained teacher and be asked to discharge the duty of Incharge Headmaster.

The Director, Secondary Education on consideration of entire material has passed an order dated 22/7/09 where it has been held that controversy which is being raised and again should be settled by this order. Since till date there is only one seniority list contained in departmental letter no. 6066 dated 24/11/1986, which is being maintained in the offices of all Regional Deputy Director of Education and there has not been any further amendment in that list, whereby the names of physically trained teachers, who are senior to other teachers, have been excluded from the list on the basis of subsequent order contained in memo no. 542 dated 8.7.2008 the physically trained teachers cannot be held junior to the general trained teachers considering their seniority they can be made Incharge Headmaster until and unless the seniority list prepared in the year 1986 is amended. It has also been stated in this letter that the effect of the decision taken in the year 2008 is being cancelled by this order, till any further order is issued.

Counsel for the petitioner submits that since the issue has already been decided and settled by the Director, Secondary Education and it is applicable in all cases including in the case of the petitioner,

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11

the impugned order dated 16.6.2008 issued by the Regional Deputy Director, Koshi Division, Saharsa cannot be considered in any other ways than being illegal, arbitrary and without jurisdiction.

Counsel for the State has also admitted this fact that in the light of the order issued by the Director, Secondary Education the impugned order cannot be considered as a valid order. Considering this fact, prayer of the petitioner for quashing his order contained in Annexure-2 dated 16.6.2008 issued by the Additional Deputy Director, Koshi Division, Saharsa is quashed. The respondents are directed to allow the petitioner to discharge his duty as Incharge Headmaster of K.A. High School, Madhuli Bazar in the district of Madhepura.

The writ application stands allowed.

(Mridula Mishra, J.)

A.Kumar

COPYING

Shree...

Ravindra Kumar

12/10/2008
20/06/2009

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सेवा में,

प्राचार्य महोदय,

जिला शिक्षा एवं प्रशिक्षण संस्थान,

मधेपुरा।

विषय : प्रखंड संसाधन केन्द्र के समन्वयक के पद पर चयन करने के संबंध में।

महाशय,

उपर्युक्त विषय के संदर्भ में अंकित करना है कि मैंने प्रखंड संसाधन केन्द्र समन्वयक के पद पर चयन हेतु प्रखंड गम्हरिया से आवेदन दिया हूँ, मैं गणित एवं रसायन शास्त्र में स्नातकोत्तर योग्यता प्राप्त हूँ, साथ ही मैं विभागीय आदेश के आलोक में एक वर्षिय सेवा कालिन प्रशिक्षण एवं बी०एड० की आर्हता प्राप्त किया हूँ।

प्रखंड संसाधन केन्द्र समन्वयक हेतु प्रकाशित मार्गदशिका में दिए गए निर्देश के आलोक में मैं शैक्षणिक एवं प्रशैक्षणिक आर्हता रखता हूँ। गम्हरिया प्रखंड से मैं ही एक मात्र स्नातकोत्तर प्रशिक्षित योग्यताधारी समन्वयक पद हेतु आवेदक हूँ। मार्गदशिका में कही भी उल्लेख नहीं है कि शारीरिक शिक्षा शिक्षक को प्रखंड संसाधन केन्द्र समन्वयक हेतु चयन नहीं किया जाय।

विश्वसत सुत्रो से ज्ञात हुआ है कि स्नातक योग्यताधारी शिक्षक का चयन समन्वयक के पद पर किया गया है, मुझे शारीरिक प्रशिक्षित शिक्षक होने के कारण प्रखंड संसाधन केन्द्र समन्वयक पद हेतु चयन से वंचित रखा गया है। विदित है कि मैं विगत 2008 स प्रखंड साधन सेवी, गम्हरिया के रूप में अपने कर्तव्य का निर्वाह कर रहा हूँ।

अतः श्रीमान् से विनय निवेदन है कि मेरे अभ्यावेदन पर सहानुभूति पूर्वक विचार करते हुए मुझे प्रखंड संसाधन केन्द्र, गम्हरिया के समन्वयक पद पर चयनित करने की कृपा की जाय। इसके लिए मैं श्रीमान् का सदा अभारी रहूँगा।

विश्वासभाजन

उमेश कुमार, स०शि०

म० वि० जगवनी, गम्हरिया
प्रखंड गम्हरिया (मधेपुरा)

पतिलिपि : जिला शिक्षा पदाधिकारी, मधेपुरा/ जिला कार्यक्रम पदाधिकारी, प्रा० शि० सर्व शिक्षा अभियान, मधेपुरा/ जिला पदाधिकारी, मधेपुरा को सादर सूचनार्थ समर्पित।

ADVOCATES' ASSOCIATION

Patna High Court

Ref.....

Date :

Legal Notice

FROM:-

K. Nishoka Singh
Adv for the client
in form of writ/CPD
computer filing
Advocate Association

So,

the Principal, District
Education & Training
Institute Madhepura

upon the instruction of my client
namely Yashwanth Kumar Singh
Mandal, respondent village - Jogaami, P.S.
Gauraha, Distt - Madhepura at present
Distant teacher in Shyram middle
school Jogaami, P.S - Gauraha, Distt - Madhepura
this legal notice is being served upon
you of which one as follows:-

- ① That my client has appointed as
Block Resource Centre
coordinator in Block Gauraha



In the subject of mathematics and science in 2008.

- ② that my client has applied for the same post on 12/3/13 and Ashok Kumar Mehta a Assistant teacher in Poo Mor middle school Tolo, Yamloing, Madhupur has been selected and debarred my client because he is physical teacher.
- ③ that my client educational qualification is M.Sc. physical trained whereas Ashok Kumar Mehta is B.Sc. trained.
- ④ that as per the various High court order and Govt. order the physical trained is equivalent to general trained.
- ⑤ that my client educational qualification is better than the Ashok Kumar Mehta.
- ⑥ that if my client has not received previous post then he is free to approach to the High court.
- ⑦ that a copy of this legal notice is kept my office for further reference.

K. Y. Mehta
 10/12
 5758
 12/4/13