

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14666 of 2016

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Zubeire Nuzhat Jahan Hyder W/o Mr. Jawed Irfan D/o Late Mr. Raza Haider,
resident of new Azimabad, Colony Sector- A, P.S.- Sultanganj, P.O.-
Mahendru, District- Patna 800006.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development Department, Govt. of Bihar, Patna
2. The Director, Secondary Education Govt. of Bihar, Patna.
3. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna.
4. The District Education Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Md. Fazal Rahman, Advocate Mr. Anisur Rahman, Advocate Mr. Md. Ehsanur Rahman, Advocate Mr. Nooren Rahman, Advocate Mrs. Ibrat Adnan, Advocate
For the Respondent/s	:	Mr. Madhaw Pd. Yadav- GP-23 Mr. Arvind Kumar, AC to GP-23
For B.S.S.C.	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT

Date of hearing: 22.08.2025

Date of Judgment: 13.02.2026

Heard Mr. D.K. Sinha, learned Sr. Counsel for the
petitioner, Mr. Madhaw Pd. Yadav, learned G.P.-23, representing
the respondent-State and Mr. Sanjay Kumar, learned counsel for
the B.S.S.C.

2. By means of this writ petition, the petitioner has
prayed for the following relief(s):-

“1(A) For quashing order bearing memo no.



613 dated 12.07.2016 issued under the signature of the Director, Secondary Education Department of Education Patna by which the proposal of approval of appointment/recognition of the service of the petitioner was rejected on the ground that the petitioner had not teacher training certificate B.Ed degree at the time of appointment as Assistant teacher in Minority School despite the fact that the petitioner continued in service for 13 years.”

3. The brief facts of the case is that in pursuance to an advertisement dated 30.03.2003 (Annexure-1), the petitioner had applied for the post of Lady Assistant Teacher (Science) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna. Subsequently, vide letter dated 18.06.2003 (Annexure-2), issued by the Joint Secretary (Admn), Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna, the petitioner was called to appear in the written examination and the interview for the post of Lady Assistant Teacher (Science) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna on 07.07.2003, in which, the petitioner appeared.

4. Vide Memo No. AUGHS/224/03 (Annexure-3), dated 15.10.2003, issued by Honorary Secretary, Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna, the petitioner was appointed on the post of Lady Assistant Teacher



(Physics) in Ayub Urdu Girl's High School- cum- Inter College Lalbagh, Patna, subject to approval of the State Government and the petitioner joined the said post on 16.10.2003 (Annexure-3/1).

5. The Principal, Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna vide letter no. 72 dated 17.05.2006 sent a proposal to the District Education Officer, Patna for approval of the petitioner's appointment as Lady Assistant Teacher (Science), Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna, which was returned by the District Education Officer, Patna, vide letter no. 1776 dated 24.07.2006 (Annexure-4), stating therein that the petitioner was not having the requisite certificate/qualification at the time of appointment.

6. In reply to the letter no. 1776, dated 24.07.2006, issued by the District Education Officer, Patna, the Principal, Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna, vide letter dated 09.08.2006 (Annexure-5), again sent the proposal to the District Education Officer, Patna for approval of the petitioner's appointment as Lady Assistant Teacher (Science), in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna stating therein that the petitioner was appointed



by the Managing Committee on the basis of recommendation made by the Selection Committee constituted for the appointment, as in the school, there was requirement of a Science Teacher having computer knowledge/degree and after following due procedure, the petitioner was appointed on the post of Lady Assistant Teacher (Science).

7. The District Education Officer, Patna vide letter no. 1001 dated 18.06.2011 (Annexure-10) sent a proposal to the Secretary, Bihar Staff Selection Commission, Patna for approval of the petitioner's appointment as Lady Assistant Teacher (Science) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna. Subsequently, the Bihar Staff Selection Commission sent the said proposal to the Director, Secondary Education, for approval of the petitioner's appointment as Lady Assistant Teacher (Science) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna, which was rejected by the Director, Secondary Education vide Memo No. 613 dated 12.07.2016 (Annexure-11), on the ground that the petitioner was not having requisite qualification/degree at the time of her appointment as Lady Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lal Bagh, Patna.

8. The aforementioned rejection order dated 12.07.2016 is



under challenge in the present writ petition.

9. Respondent no.2/the Director, Secondary Education, Government of Bihar, Patna has filed a counter affidavit, wherein, it has been stated that the appointment of the petitioner was made contrary to the advertisement dated 30.03.2003 and the provisions laid down under Section 18 of the Bihar Non-Govt. Secondary Schools (Taking Over, Management and Control) Act, 1981, which prescribes the educational qualification of the teachers of nationalized Secondary School, which has been made applicable also to the teachers of Minority Secondary Schools. It has further been stated in the counter affidavit that in an identical matter, this Court in C.W.J.C. No. 7923 of 2013 (Asha Rani Vs. the State of Bihar & Ors.) was pleased to dismiss the case of the petitioner therein on the ground that the petitioner was not holding the degree of B.Ed at the time of appointment.

10. The Secretary, Bihar Staff Selection Commission, Patna/respondent no.3 has also filed a counter affidavit, wherein it has been stated that as per the provisions made in the Bihar Non-Government Secondary School (Management and Control) Amendment Act, 2011, the power regarding the approval of appointment of teachers of Minority Schools is vested with the



Director, Secondary Education and the Director, Secondary Education, Government of Bihar has rejected the proposal for approval of appointment of the petitioner as Lady Assistant Teacher (Science) on the ground that at the time of appointment, the petitioner did not possess the requisite qualification.

11. Learned senior counsel for the petitioner submits that pursuant to the advertisement dated 03.03.2003, the petitioner applied for the post of Assistant Teacher (Science) in Ayub Urdu Girls High School-cum-College, participated in the written test and interview held on 07.07.2003, and was recommended by the duly constituted Selection Committee. On the basis of the recommendation of the Selection Committee, the Managing Committee issued appointment letter dated 15.10.2003 (Annexure-3). The petitioner joined service on 16.10.2003 and continuously discharged her duties sincerely for 13 years. At the time of her appointment, the petitioner possessed Master's degree in Computer Science, which was the highest qualification among all candidates. She subsequently acquired the required B.Ed. qualification in 2005.

11.1. Learned senior counsel for the petitioner further submits that the Principal of the institution forwarded proposals for approval of the petitioner's appointment in the prescribed



proforma to the District Education Officer, Patna. However, the District Education Officer, Patna rejected the proposal solely on the ground that the petitioner was not having the requisite B.Ed. qualification at the time of her appointment.

11.2. It is further submitted by learned senior counsel for the petitioner that the impugned rejection order (memo no. 613 dated 12.07.76 / Annexure-11) completely ignores the fact that the petitioner had worked uninterruptedly for 13 years; she obtained the requisite training (B.Ed.) in 2005, long before the State initiated the present proceedings and the law laid down by the Hon'ble Court in several judgments that subsequent acquisition of training fulfills the mandate of Section 4(2) of the Act.

11.3. Learned counsel for the petitioner in support of his contention, has relied on the Judgment reported in **PLJR 2003 (2) 303 (Chhathi Mishra @ Sri Chhathu Mishra & Anr. Vs. The State of Bihar & Ors.)**, to contend that if a teacher acquires the requisite qualification during the pendency of the LPA, his/her appointment cannot be invalidated, as the essential requirement of Section 4(2) stands complied with. Also relied on is the Judgment dated 18.07.2016 passed in **L.P.A. No. 136 of 2015 (Mr. Subhash Kumar Vs. The State of Bihar & Ors.)**



to contend that requirement of teachers training, as provided under the Rules, has been done away with by the Human Resources Development Department resolution dated 5th of March, 1991, issued by the Commissioner and Secretary, Human Resources Development Department, Bihar in the name of Governor, Bihar under Memo No. 10/v 3-56/88 (part) E-116. Accordingly, there was no requirement of teachers training qualification at the time the petitioner was appointed on 15.10.2003.

11.4. Learned senior counsel for the petitioner further submits that the petitioner stands on identical footing as the teachers in the above-mentioned judgments. She acquired B.Ed. in 2005, and, therefore, approval of her service must be granted with all consequential benefits.

12. On the other hand, learned counsel for the respondents submit that the petitioner claims approval of her appointment as Assistant Teacher in Ayub Urdu Girls High School-cum-Inter College, Lalbagh, Mahendru, Patna on the basis of appointment letter dated 15.10.2003, issued by the Managing Committee. However, such appointment is contrary to the mandatory statutory requirement prescribed under Section 18 of the Bihar Non-Government Secondary Schools (Taking



Over, Management & Control) Act, 1981, which makes applicable the same qualifications for the teachers of minority secondary schools as are applicable to the teachers of nationalized secondary schools. In both categories, B.Ed. degree is one of the essential qualifications. The appointment of the petitioner was made in clear violation of statutory provisions as well as the conditions of the advertisement (Annexure-1 of the writ petition) and hence the appointment of the petitioner is quite illegal since very inception.

12.1. Learned counsel for the respondents further submit that identical issue has already been decided by this Hon'ble Court in **CWJC No. 7923 of 2013 (Asha Rani vs. State of Bihar & Ors.)**, wherein the writ petition was dismissed on the ground that the petitioner therein did not possess the B.Ed. degree at the time of appointment.

12.2. It is further submitted that the judgment passed in **LPA No. 136 of 2015 (Subhash Kumar vs. State of Bihar)** is not applicable to the present case, as the relaxation referred therein was granted by an executive instruction as contained in memo no. 116 dated 05.03.1991 which is applicable only to *taken-over schools* where qualification for B.Ed. was relaxed in specific circumstances and in view of the aforesaid facts and



circumstances, the writ petition is devoid of any merit and is liable to be dismissed.

12.3. The respondents in support of their contentions have relied on the following judgments:-

i. Prit Singh vs. S.K. Mangal, 1993 Supp (1) SCC 714

ii. Hosiar Singh vs. State of Haryana, 1993 SCC 2606

iii. AIR 2010 SC 1937 – Fuljit Kaur vs. State of Punjab

iv. AIR 2006 SC 898 – K.K. Bhala vs. State of M.P.

v. AIR 2014 SC 746 – Basawaraj & Ors. vs. Special Land Acquisition Officer

13. Heard the learned counsel appearing for the contesting parties.

14. It appears that advertisement dated 30.03.2003 was issued by Honorary Secretary, Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna *inter alia* indicating that Lady Assistant Teacher (science) is wanted with minimum qualification of B. Sc (Hons.) preferably in Physics with B. Ed. degree. Upon participation by the petitioner in terms of the aforesaid advertisement, she was appointed as Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna on 15.10.2003, vide Memo No. AUGHS/224/03



(Annexure-3). Subsequently, the proposal for approval of the appointment of the petitioner as Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna was initiated by the School Management Committee, which was rejected by the Director, Secondary Education vide impugned order dated 12.07.2016, contained in Memo No. 613 (Annexure-11) on the ground that the petitioner did not have the required teacher training qualification. The aforesaid rejection order dated 12.07.2016 has been challenged by the petitioner in this writ petition contending that there is no requirement of teacher training qualification for appointment as Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna. Alternatively, an argument has been made that the petitioner, after her appointment as Assistant Teacher (Physics), has obtained teachers training qualification on subsequent date and that proposal for approval of her appointment as Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna could not have been rejected. In support of aforementioned two fold contentions, the petitioner has primarily relied on two decisions of this Court, first as reported in PLJR 2003 (2) 303 (Chhathi Mishra @ Sri Chhathu Mishra & Anr. Vs. The State of Bihar & Ors.) and the



second decision rendered in L.P.A. No. 136 of 2015 (Subhash Kumar Vs. The State of Bihar & Ors.).

15. It is an admitted position that the petitioner, at the time of her appointment, did not have the teachers training qualification. The appointment of Assistant Teacher (Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna is regulated by the Bihar Non-Government Secondary Schools (Taking Over, Management & Control) Act, 1981 (hereinafter referred to as the Act of 1981) and the Rules framed thereunder, namely, Bihar Government Secondary School (Service Conditions) Rules, 1983 (hereinafter referred to as the Rules of 1983).

16. Advertisement dated 30.03.2003, issued by Honorary Secretary, Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna would go to show that the educational qualification prescribed for the post of Assistant Teacher (Physics) was graduate with B.Ed. The advertisement, therefore, had clearly specified that along with the educational qualification of graduate, preferably in physics, there was also requirement of candidate possessing B.Ed. Degree. The essential educational qualification prescribed in the advertisement dated 30.03.2003 is found to be in consonance



with the educational qualification prescribed for appointment of Assistant Teacher under Rule 4(C) of the Rules of 1983, which *inter alia* provides that for appointment of Assistant Teacher, the essential qualification is bachelors degree in Arts, Science and Commerce from a recognised university and B.Ed/diploma in Education/Diploma in Teaching/.C.T. awarded by the recognized University, a Board recognised by the State Government or the Education Department of the State Government or an equivalent teacher training qualification declared by the State Government.

17. Thus there is no dispute on the facts that in the advertisement and the Rules of 1983 framed in pursuance of Section 9 of the Act of 1981, the essential qualification required for appointment of Assistant Teacher in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna is graduate with teachers training qualification mentioned therein such as B.Ed., Diploma etc. and that the petitioner was not in possession of teachers training qualification at the time of her appointment.

18. In the backdrop of the aforementioned facts, what arises for determination by this Court is whether the rejection of the proposal for approval of the appointment of the petitioner as Assistant Teacher (Physics) in Ayub Urdu Girl's High School-



cum-Inter College, Lalbagh, Patna by the Director, Secondary Education, Government of Bihar on the ground that the petitioner does not possess the teacher training qualification, is justified?

19. Law regarding possession of prescribed qualification at the time of appointment is no longer *res integra* and is well settled by now that the person appointed to a post must possess the prescribed educational qualification for the post at the time of appointment. In this regard, a reference may be made to a decision of Hon'ble Supreme Court rendered in the case of **Dr. Prit Singh Vs. S.K. Mangal & Ors.** reported in **1993 Supp (1) Supreme Court Cases 714**, wherein in paragraph no. 13 thereof, it has been held as under:-

“13.If he was not eligible for appointment in terms of the prescribed qualifications on the date he was appointed by the Managing Committee subject to the approval of the Vice Chancellor, then later he cannot become eligible after the qualifications for the post were amended. As such we are in agreement with the view expressed by the High Court, that on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed.”



20. Similarly, in the case of **Hoshiar Singh Vs. State of Haryana & Ors** reported in **AIR 1993 Supreme Court 2606** it has been held in paragraph no. 11, which reads as under

“Once it is held that the standards for physical fitness which have been laid down in the advertisement could be so prescribed, the matter of relaxation of the said standards would depend on the terms of the advertisement. The advertisement and the corrigendum are silent about relaxation of the said standards by the Board. In these circumstances, the Board could not, on its own, relax the standards of physical fitness as mentioned in the advertisement and the corrigendum”.

21. Likewise, in the case of **District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram Vs. M. Tripura Sundari Devi**, reported in **1990 (3) SCC 655**, wherein the minimum essential qualification mentioned in the advertisement was second class postgraduate and the respondent who had third class postgraduate degree was appointed, the Hon’ble Supreme Court, disapproving the said appointment, has held as under:-

“It must further be realised by all concerned that



when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.”

22. Similarly, in the case of **K.K. Bhalla Vs. State of M.P. & Ors.** reported in **AIR 2006 Supreme Court 898**, Hon’ble Supreme Court in paragraph no. 60 observed as under:-

“60. The development plan was prepared in terms of the 1973 Act and the Rules framed thereunder. Change of user, we have not been shown, is permissible under the Act or the Rules. In the absence of such a provision and/or without following the statutory requirements therefor, if any, the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes may be used for industrial purposes.”



23. The other two decisions relied on by the learned State Counsel rendered in the case of **Fuljit Kaur (Supra)** and **Basawaraj (Supra)** are for the proposition that illegality committed earlier cannot be perpetuated inasmuch as equality under Article 14 of the Constitution of India is a positive concept and it does not envisage for negative equality.

24. It, thus, becomes clear from the aforementioned decisions rendered by Hon'ble Supreme Court that the person appointed must possess the requisite essential educational qualification at the time of appointment and there can be no relaxation to such prescription unless it has been specifically provided either in the advertisement or in the Rules and such relaxation can be made strictly in terms of provisions of relaxation contained either in the advertisement or in the Rules. In the absence of any such provision for relaxation in the advertisement or in the Rules, possession of requisite educational qualification at the time of appointment is *sine qua non* for the appointment to be valid and legal.

25. In the light of aforementioned legal provision, the impugned order dated 12.07.2016, issued by the Director, Secondary Education, Government of Bihar rejecting the proposal for appointment of the petitioner as Assistant Teacher



(Physics) in Ayub Urdu Girl's High School-cum-Inter College, Lalbagh, Patna on the ground of lacking of teachers training qualification prescribed in the advertisement as well as in the Rules at the time of her appointment, does not appear to suffer from any legal infirmity.

26. After having found that the impugned order dated 12.07.2016 does not appear to suffer from any legal infirmity, the two decisions of this Court rendered in the case of **Subhash Kumar (Supra)** and **Chhathi Mishra (Supra)** relied on by the petitioner, need to be considered and discussed to find out as to whether the two decisions rendered by this Court are of any help to the petitioner.

27. The appellant of L.P.A. No. 136 of 2015, namely Subhash Kumar, was appointed on the post of Teacher in Economics in Sri Guru Govind Singh Girls High School, Patna City pursuant to advertisement and selection made by duly constituted selection committee vide appointment letter dated 14.11.2003 and pursuant thereto, the appellant joined the service on 18.11.2003. As the appellant did not possess B.Ed. Degree, the appellant, after taking due permission of the management committee of the school, obtained B.Ed. degree in the year 2010 from an affiliated unit of Magadh University duly recognized by



the N.C.T.E. Proposal moved for approval of the appointment of the appellant as Assistant Teacher in economics in Sri Guru Govind Singh Girls High School, Patna City was rejected vide Memo No. 390, dated 30.03.2013 by the Director, Secondary Education, Government of Bihar, Patna on the ground that the appellant did not possess B.Ed. Degree and was also overaged at the time of his initial appointment. The appellant, challenging the aforementioned order dated 30.03.2013 rejecting the proposal for approval of his appointment on the post of Assistant Teacher, filed a writ petition being C.W.J.C. No. 14248 of 2013, which was disposed of by learned Single Judge vide order dated 30.07.2013 directing for approval of the service of the appellant with effect from 25.10.2010. The order of learned Single Judge was put to challenge in L.P.A. No. 136 of 2015. The Hon'ble Division Bench of this Court, while recognizing the statutory requirement under Rule 14 (C) of the Rules of 1983 for appointment of teacher that there is a requirement of teachers training qualification such as B.Ed., Diploma in Education/Diploma in teaching in addition to bachelor degree in Arts, Science and Commerce from a statutory University, has, however, by relying on resolution dated 5th of March, 1991, issued by the department of Human Resources Development



under the signature of Commissioner and Secretary, Human Resources Development Department on behalf of the Governor of Bihar, held that the appointment of the appellant by the Managing Committee dated 14.11.2003 was in accordance with law and cannot be said to be irregular much less illegal. The Court accordingly held that the appointment of the appellant was in accordance with prescribed Rules and therefore, the appellate Court set aside the judgment of learned Single Judge by holding that the appellant is entitled for approval of his services with effect from the date on which he joined the school pursuant to his appointment by the Managing Committee of the school with all consequential benefits. While holding as above, the Hon'ble Division Bench was of the view that the requirement of B.Ed. degree from a recognized institution as stipulated in Rule 4(C) of the Rules of 1983 has been waived/ended by the resolution of the State Government containing Memo No. 116 dated 5th of March, 1991.

28. In holding that the requirement of B.Ed. degree from a recognized institution under Rule 4(C) of Rule, 1983 has been waived/ended, the Hon'ble Division Bench appears to have relied on Clause 3(a) of the resolution dated 5th of March, 1991, wherein it has been provided that the compulsion of



training in teacher's appointment is abolished. The resolution dated 5th of March, 1991, which abolishes the compulsion of training in teacher's appointment has been quoted by the Hon'ble Division Bench in the judgment rendered in the L.P.A. For appreciation of the nature and character of the resolution dated 5th of March, 1991, the same is also reproduced herein as quoted in the judgment passed in the L.P.A. which reads as under:-

“Human Resources Development Department

Resolution

Patna, dated 5th March, 1991

Subject:-Arrangement for training during service period.

The Government and Non-Government teachers training colleges are being run within the State of Bihar. These training colleges are of two type-The matriculate students get admission in one type of college and graduates are admitted in other type of college. Two years training is imparted in the first type of college and nine months training is imparted in the second type colleges. The candidates who have obtained training from these colleges, are appointed in the schools upto the level of Primary to Secondary schools and at the same time, they are appointed in teachers training colleges too. The matriculation trained candidates are appointed in Primary and Middle Schools, as per their class on the basis of their success in examination after preparing a panel of appointment. Hence, there is a race for admission in these training colleges. The admission in the Government Teacher Training Colleges (Matric and Graduation) is



taken as per merit list but corrupt practices are prevalent in the Non-Government Teachers Training Colleges due to which these have turned into a source of monetary gain.

2. Keeping in view the aforesaid circumstances, the State Government has promulgated an Act which contains provision that no any institution or person can establish any type of Teachers Training College without obtaining prior approval of the Government. At the same time, the State Government has laid conditions for recognition/affiliation of such intuitions, vide Notification No. -1107 dated 25/11/87 of the Department; but it has not made any difference at all.

3. Hence, in the aforesaid context, the State Government has taken following decision to remove corruption in the Non- Government Teachers Training Colleges and improve the level of training there:-

(a) The compulsion of training in teacher's appointment is abolished.

(b) After appointment, training shall be imparted in Government Training Colleges during service period.

(c) The procedure for appointment to the post of teacher, shall be based on merit.

(d) The concerned Education Controller shall make immediately necessary modification in the rules regarding appointment in the cadre and obtain approval of the Administration, which shall come into force within the whole State from the date of issuance of the resolution.

Order:- It is ordered to publish its resolution in the special issue of Bihar Gazette.

By the order of Governor, Bihar

Sd/- R. K. Srivastava

Commissioner and Secretary

Human Resources Development Department, Bihar

Memo No. 10/v 3-56/88 (part) E-116 Patna, dated 5th

March, 1991 ”



29. On perusal of the resolution dated 5th of March 1991, issued by the Human Resources Development Department, it appears that the said resolution dated 5th of March, 1991 is in the nature of executive instruction relating to arrangement for training during service period. In the circumstances narrated in the resolution dated 5th of March, 1991, the compulsion of training in teacher's appointment has been abolished by clause 3(a) thereof. Whatever be the nature of clause 3(a) of resolution dated 5th of March, 1991 abolishing the compulsion of training in teacher's appointment, the said resolution dated 5th of March, 1991, which is in the nature of executive instruction cannot override the statutory prescription of the requirement of teachers training qualification prescribed under Rule 4(C) of the 1983 Rules, which has been made in pursuance of Section 9 of the Act of 1981. This is so in the light of the law laid down by Hon'ble Supreme Court that the executive instruction cannot override the statutory Rules or Act as the case may be.

30. In the case of **B.N. Nagarajan & Ors. Vs. State of Mysore and Ors.** reported in **1966 SCC OnLine SC 7**, Hon'ble Supreme Court in paragraph no. 5 has held as follows:-



“5.It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act.”

31. In the case of **Jaiveer Singh Vs. State of Uttarakhand** reported in **2023 SCC OnLine SC 1584**, Hon’ble Supreme Court has observed in paragraph no. 49 thereof as follows:-

“49. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.”

32. Hon’ble Supreme Court in the case of **Bank of Baroda & Anr. Vs. G. Palani & Ors.** reported in **(2022) 5 SCC 612** in paragraph no. 14 thereof has observed as follows:-

“14. First we come to the rigour of the Regulations. The Regulations have statutory



force, having been framed in exercise of the powers under Section 19(2)(f) of the 1970 Act and are binding. They could not have been supplanted by any executive fiat or order or Joint Note, which has no statutory basis. The Joint Note of the officers also had no statutory force behind it and could not have obliterated any of the provisions of the 1970 Act or the existing Regulations. Thus, Joint Notes could not have taken away the rights that were available under the 1995 Pension Regulations to the Officer.”

33. The Hon’ble Supreme Court in the case of **R. Ranjith Singh & Ors. Vs. State of Tamil Nadu & Ors.** reported in **2025 SCC OnLine SC 1009** has observed in paragraph no. 19 thereof as follows:-

“19. xxxxx

.....The State Government has certainly issued various executive directions from time to time for appointment under the direct recruitment quota providing reservation to in-service candidates to the extent of 20%; however, the rules were never amended till 21.11.2017. It is a well settled proposition of law that executive instructions cannot supplant the statutory rules. They can supplement/clarify the statutory rules. In the present case, the executive instructions issued from time to time have in fact supplanted the statutory rules and such a process is unheard



of in the field of service jurisprudence.”

34. In view of the aforementioned settled position of law that the executive instruction cannot override the statutory Rules or the Act, the decision rendered by Hon’ble Division Bench of this Court in L.P.A. No. 136 of 2015 cannot come to rescue of the appellant in view of the admitted position of fact that the appellant at the time of her appointment did not possess the teachers training qualification as is required to be possessed under Rule 4(C) of the 1983 Rules.

35. In the case of **Chhathi Mishra (supra)** relied on by the petitioner, the petitioners therein, who did not possess the requisite training qualification, had preferred the writ petition being C.W.J.C. No. 1645 of 1983 seeking direction to approve their services as Assistant Teachers. The said writ petition was allowed by the learned Single Judge directing the respondents to approve the services of the petitioners and to pay their salaries and other emoluments from the date of the notification. They were further directed to grant facility for their training giving them at least one chance to obtain B.Ed. degree with a condition that if the petitioner do not avail the opportunity and thus do not obtain B.Ed. degree, it will be open to the government to



terminate the service of the petitioners. The order of the learned Single Judge was put to challenge by the State of Bihar in L.P.A. No. 24 of 1984, which was allowed by an order dated 01.11.1999, whereby the direction given by the learned Single Judge was set aside. The petitioner filed Civil Review No.24 of 2000 seeking review of the order dated 01.11.1999, passed in L.P.A. No. 24 of 1984 by contending that the petitioners acquired requisite qualification of training during the pendency of the L.P.A. in the year 1986, but that fact was not brought to the notice of the Court as the petitioners did not give such instruction to their lawyer, which resulted in passing of the order dated 01.11.1999 in L.P.A. No. 24 of 1984. The review petition was decided on 8th of January, 2003 by recalling the order dated 01.11.1999 passed in L.P.A. No. 24 of 1984 by holding that from the counter affidavit of the State, it appears that the petitioners' services have already been approved on 29.06.1984 during pendency of the L.P.A. and that the petitioners have also acquired requisite qualification and thus fulfilled the condition envisaged in Section 4(2) of the Take Over Act and, therefore, nothing stands against them to invalidate their appointment.

36. The aforementioned Civil Review No. 24 of 2000 was allowed recalling the order dated 01.11.1999, passed in L.P.A.



No. 24 of 1984 in the peculiar facts and circumstances of that case that services of the petitioners were already approved on 29.06.1984 during pendency of the L.P.A. which fact was not brought to the notice of the L.P.A. Court and that the petitioners, in the meantime had acquired requisite qualification fulfilling the condition envisaged in Section 4(2) of the Take Over Act. It was in the aforementioned peculiar facts of the case that the review petition filed by the petitioner was allowed. The Court, in the review petition, has not laid down any law of universal application which can be applied in the present case in favour of the petitioner that the acquisition of requisite qualification during the pendency of the proceedings in the Court would entitle validation of the earlier appointment made dehors the Rules. The decision rendered in the aforementioned review petition is clearly distinguishable from the present case and is also of no assistance to the petitioner.

37. For the reasons and the discussions made hereinabove, I find no merit in the instant writ petition requiring any interference on the order dated 12.07.2016, passed by the Director, Secondary Education, Government of Bihar, Patna rejecting the proposal for approval of appointment of the petitioner as Assistant Teacher (Physics) in Ayub Urdu Girl's



High School-cum-Inter College, Lalbagh, Patna on the ground of not possessing the teacher training qualification as prescribed under the Rules.

38. The writ petition stands dismissed with no order as to cost.

(Nani Tagia, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	22.08.2025
Uploading Date	13.02.2026
Transmission Date	

