

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.780 of 2014

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1. Abhay Kumar Son Of Late Krishna Kumar Prasad Resident Of Village- Kalupur,
P.S.- Parascugh, District- Jehanabad

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department,
Govt. Of Bihar, Patna
2. The Director, Primary Education, Govt. Of Bihar, Patna
3. The Regional Deputy Director of Education, Magadh Division, Gaya

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1313 of 2014

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1. Bindu Kumari D/O Harbansh Singh, W/O Sudhir Kumar Sharma Resident Of
Village - Ubhai, P.S. Paraiya, District - Gaya, At Present Working As Assistant
Teacher, Government Basic School, Gopalpur Anchal, P.O. Akbarpur, Distt. -
Nawada

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna
3. The Director, Primary Education, Govt. Of Bihar, Patna
4. The Regional Deputy Education, Govt. Of Bihar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1371 of 2014

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1. Manoj Kumar S/O Sri Sheo Sagar Singh Resident Of Village+ P.O- Barpa,
District- Aurangabad At Present Working As Assistant Teacher, Rajkiya Buniyadi
Vidyalaya, Gopalpu, District- Nawada.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna.
3. The Director, Primary Education, Govt. Of Bihar, Patna.
4. The Regional Deputy Director of Education, Magadh Division, Gaya.

.... Respondent/s

with

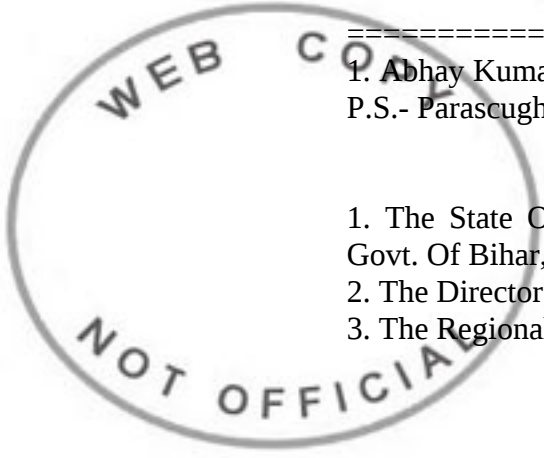
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Civil Writ Jurisdiction Case No. 1708 of 2014

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1. Kamla Sinha, Aged About 48 Years W/O Sri Parmeshwar Prasad Resident Of
Chanakayapuri Colony, MIG, P.S. Rampur, District Gaya.

.... Petitioner/s



Versus

1. The State Of Bihar.
 2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna.
 3. The Director, Primary Education, Govt. Of Bihar, Patna.
 4. The Regional Deputy Director of Education, Magadh Division, Gaya.
- Respondent/s
- =====

Appearance :
(In All cases)

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr Rajeev Kumar Singh
Mr Mukesh Kumar Singh

(In CWJC No.780 of 2014)

For the Respondent/s : Ms Kalpana, AC to SC 19

(In CWJC No. 1313 of 2014)

For the Respondent/s : Mr. Kundan Bahadur Singh, SC 22

(In CWJC No. 1371 of 2014)

For the Respondent/s : Mr. Sunil Kumar Mandal, SC 24
Mr Bipin Kumar, AC to SC 24

(In CWJC No. 1708 of 2014)

For the Respondent/s : Mr. Kumar Priya Ranjan, SC 23
Mr Vasant Vikas, AC to SC 23

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-02-2015

All the petitioners have been removed from their service as Assistant Teachers because a Bench of this Court in a contempt application filed by one Md Murshid Alam, which was registered as MJC No.280 of 2012, made a grievance that similar illegally appointed persons are continuing in service on the post of Assistant Teachers. The order of the learned single Judge in the contempt application is Annexure- 14.

Since there was an observation made by the learned Single Judge, exercise was carried out against all these petitioners to find out whether their appointment was illegal or not and whether the

grievance of Md.Murshid Alam with regard to discrimination was made out. Annexure- 2 is the direction of the Principal Secretary to the Regional Deputy Director, Magadh Division to initiate the process for removal and Annexure- 1 is the order of removal dated 26.11.2013.

Learned senior counsel representing these petitioners submits that the Regional Deputy Director obviously misconstrued the direction contained in Annexure- 2, issued by the Principal Secretary, Education Department. He took it as a direction for initiation of a process for removal as if that is what the Principal Secretary wanted because within a week of such a direction, a hasty kind of exercise has been carried out and orders of removal from service has been passed, when most of these petitioners have worked for more than 2-3 decades.

If one reads the impugned order contained in Annexure- 1, which forms the basis against these petitioners, it indicates that these petitioners were appointed by the Regional Deputy Director without waiting for the approval of the Director and without taking into consideration roster clearance and reservation. This fact has been held to be fatal for the continuance of these petitioners and the order of termination has been taken

It has been submitted that the order of the Regional



Deputy Director falls within the category of irregularity and not illegality. If there was delay in taking a decision by the Director in passing appropriate direction within time, the fault lies with the Director and not the petitioners. The order itself indicates that there was some kind of haste to fill up various vacant posts of Assistant Teachers in basic schools which was on the verge of closure for want of teachers. If there was some irregularity by the Deputy Director, it was not in the process of appointment. Waiting for final approval or direction of the Director was a formal exercise. The whole selection cannot be vitiated on that count.

Yet another aspect which the Court cannot ignore is that on a passing kind of observation made by learned Single Judge in contempt application, a person, who tried to create a case of some kind of discrimination, the exercise has been done after many many years of these petitioners joining service and working under the respondents. It is also evident from the order that their appointment was put under some kind of scrutiny but the Divisional Commissioner held in their favour. Thereafter they have worked and continued on their post without any kind of dispute or objection raised on their continuance. Such long period of working does create a kind of right in favour of these petitioners and there has to be some time frame within which such objections ought to be raised or a

decision for removal can be taken.

These writ applications do not fall in the category of such cases where illegality is rooted in the very inception of the appointments. Taking into consideration that the case is of irregularity and not an illegality coupled with the long continuance of the petitioner on the post of Assistant Teachers, the Court is inclined to reject the objection of the State, which is in support of the impugned order. A case is made out in favour of these petitioners by quashing Annexure- 1.

All the writ applications are allowed. Petitioners are restored back to their respective posts and their joining will be accepted without let and hindrance. They shall also be entitled to all the consequential benefit by virtue of their reinstatement.

(Ajay Kumar Tripathi, J)

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