

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16916 of 2011

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1. Narmadeshwar Pandey S/O Sri Gagandeo Pandey R/O Village & P.O.-Mathia Virt Baithania, P.S.-Majhauria, District- West Champaran
 2. Jagdish Prasad S/O Late Mahavir Prasad R/O Village & P.O.- Barvat Parsarayan, P.S.- Bettiah Mofassil, District- West Champaran
 3. Jagat Narayan Chaubey S/O Late Siddhu Chaubey R/O Village- Barawa Chap, P.O.-Jaitiya, P.S.- Chanpatia, District- West Champaran
 4. Pramod Tiwari S/O Late Mankeshwar Tiwary R/O Village & P.O.- Rani Pakadi, P.S.- Bettiah Mofassil, District- West Champaran
 5. Brijesh Kumar Srivastava S/O Late Gorakh Prasad R/O Village & P.O.- Chailabhar, P.S.- Majhauria, District- West Champaran
 6. Satyendra Singh S/O Kamla Singh R/O Village - Gahiri Kothi, P.O.- Victoria Mission, P.S.- Nautan, District- West Champaran
 7. Rajeshwar Mishra S/O Radheshyam Mishra R/O Village- Chargahan Mishra Tola, P.O.-Belbagh, Bettiah, P.S.- Bettiah Town, District- West Champaran
 8. Mritunjay Kumar Pandey S/O Bharath Pandey R/O Village & P.O.- Mathia Virt Baithania, Majhauria, District- West Champaran
 9. Alakhnath Tiwari S/O Late Bindhyachal Tiwari R/O Village-Nautan Khurd, P.O.- Harpur Tola, District- West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Chief Secretary, Government Of Bihar, Old Secretariat, Patna
3. Principal Secretary-Cum-Commissioner Human Resources Development Department, Government Of Bihar, Vikash Bhawan, Bailey Road, Patna
4. Director, Mass Education Directorate Bihar, Vikash Bhawan, Bailey Road, Patna
5. District Mass Education Officer, West Champaran At Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. UMESH CHANDRA VERMA
For the Respondent/s : Mr. GIRIJA SHANKAR PD GP1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 12-05-2017

Heard the parties.

The present writ application has been filed for quashing the order contained in Memo No. 1067 dated 30.05.2011,



as contained in Annexure-6, passed by Principal Secretary, Human Resources Development Department, Bihar, Patna whereby the petitioners' claim for absorption in the Government service in the light of the order dated 29.03.2011 passed in CWJC No. 2269 of 2008 has been rejected. The further prayer has been made for a direction to respondent no.5 to absorb the service of the petitioners on appropriate posts in the Govt. department in terms of Govt. Resolution dated 12.01.2010 as contained in Annexure-4 as the purport of the said circular has been misinterpreted for rejecting the claim of the petitioners.

The petitioners claim to have been engaged on the post of Adult Education Supervisors in the year 1978-79 under the Adult Education Programme sponsored by the Central Government. Subsequently, another scheme being Non-Formal Education Scheme was introduced and there also the petitioners worked from 1985-86 to 1990-91 on fixed honorarium of Rs. 600/- per month. Subsequently, large number of supervisors were engaged in the Non-Formal Education Scheme. The matter ultimately travelled to the Full Bench in CWJC No. 1458 of 1988 (Bishundeo Choudhary & ors. Vs. State of Bihar and Anr. reported in 1995 (1) PLJR 123, when the Full Bench, taking into consideration the fact that the scheme was financially sponsored by the Central Government, held



that the scheme being purely temporary, the persons getting employment cannot maintain claim for their regularization. However, the Full Bench of this Court took into consideration that the State actually framed a scheme, indicating therein the mode and different conditions for absorption of the employee including the petitioners and interveners of the said case. On behalf of the petitioners, an attempt was made to show that the scheme was made to defeat their genuine claim and unless the same is suitably amended or modified the claim of petitioners cannot be satisfied. Taking into consideration the aforesaid submission, the Full Bench observed that the State Government having prepared a scheme, if there are certain hardship, the candidates can approach the Government for necessary modification or its amendment. The petitioners also preferred CWJC No. 2469 of 2008 claiming their absorption. This Court disposed of the said writ application with observation that in compliance of the order of this Court, a resolution dated 12.01.2010 has been issued by the Principal Secretary, Human Resources Development Department, Government of Bihar framing a scheme for one-time-absorption. If the petitioners are covered by the said scheme, then it would be proper that they should apply to the concerned authority who will consider their cases along with the case of the other persons



similarly situated.

In pursuance to the said observation, the claim of the petitioners was considered in view of the scheme stipulated under Memo No. 27 dated 12.01.2010, as contained in Annexure-4. The Principal Secretary, Human Resources Development Department, Government of Bihar vide Memo No. 1067 dated 30.05.2011 rejected the claim of the petitioners on the ground that the scheme dated 12.01.2010, as contained in Annexure-4, only covers such Supervisors who were working for a minimum period of three years under the Non-Formal Education Scheme, whereas the petitioners were working in Adult Education Scheme.

A counter affidavit has been filed on behalf of the respondent no.4 stipulating therein that the petitioners were engaged in Adult Education Scheme and not in Non-formal Education Scheme, hence, claim of the petitioner for absorption has been rejected. Moreover, absorption cannot be done in the light of ratio laid down in the case of Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors, reported in (2006) 4 Supreme Court Cases 1 and by Full Bench of this Court in Ram Sewak Yadav Vs. State of Bihar, reported in 2013(1) PLJR 964.

It is submitted by the learned counsel for the petitioners that similarly situated persons under the scheme were



given privilege of being absorbed and the petitioners have been discriminated which is not expected from a model employer like State Government.

Considering the rival submissions, this Court finds that it is the admitted case of the petitioners that they were engaged only as part time Adult Education Supervisors. Whereas, the Scheme dated 12.01.2010 was specifically with regard to the Supervisors in Non-Formal Education Scheme.

Putting to test, the case of the petitioners on the touchstone of what has been held in the case of Uma Devi (supra) and by the Full Bench of Patna High Court in Ram Sevak Yadav's case (supra), the petitioners cannot be regularized merely because they were engaged temporarily in a scheme for a particular period of time. Regularization cannot be a process, as a matter of course. Merely because the petitioners were engaged temporarily in a scheme would not create an indefeasible right to be absorbed. Particularly when the object of the scheme, in which the petitioners were engaged, was not to provide the right to work. Same was also the view of the Full Bench in the case of Bishundeo Choudhary and Ors. (supra). The petitioners have been out of engagement for long, while they were engaged only for a temporary period during 1985-86 to 1990-91. Hence, taking into account the above discussions no



relief can be granted to the petitioners.

Accordingly, this writ application is dismissed.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.05.2017
Transmission Date	N/A

