

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2142 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 14805 of 2016**

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Dr. Shambhavi Kumari, W/o- Dr. Ranveer Batsa, Resident of C/o- Prof. Jaya
Prakash Narayan Jha, Sipahi Tola, P.S.- Khajanchi Haat, District- Purnea (Bihar)

.... Appellant/s

Versus

1. The Union of India through the Secretary, Human Resources Development Department, Government of India, New Delhi.
2. The Secretary, Human Resource Development Department (Education Department), Government of India, New Delhi.
3. The Central University of South Bihar through its Registrar, B.I.T. Campus, P.O.- B.V. College, Patna.
4. The Vice-Chancellor, Central University of South Bihar B.I.T. Campus, P.O.- B.V. College, Patna
5. The Joint Registrar Central University of South Bihar B.I.T. Campus, P.O.-B.V. College, Patna.
6. The Dy. Registrar Central University of South Bihar B.I.T. Campus, P.O.- B.V. College, Patna.
7. The Dean School of Education, Central University of South Bihar B.I.T. Campus, P.O.- B.V. College, Patna.
8. The National Council for Teachers Education (NCTE) through Regional Director NCTE Eastern Regional Centre, Bhubneshwar (Orissa).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Purushottam Kumar Jha, Advocate.
Mr. Avanindra Kumar Jha, Advocate.

For the Respondent/s : Mr. S.D Sanjay, A.S.G.
Mr. Gyan Prakash Ojha, C.G.C.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT**

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-11-2016



The present Letters Patent Appeal is directed against an interlocutory order passed by the learned Single Bench of this Court on 11th of November, 2016 in C.W.J.C. No. 14805 of 2016 whereby, the writ application was admitted for hearing. However, while addressing arguments, the parties agreed that the writ application itself be taken up for final hearing. Therefore, C.W.J.C. No. 14805 of 2016 is taken up for hearing.

Re.: C.W.J.C. No. 14805 of 2016

The challenge in the writ application is to Advertisement No. CUSB/Advt./29/2016 dated 20th of June, 2016 whereby, the University has invited applications for 13 posts in School of Education to be made on contract basis. There is a further stipulation that the contractual appointment may be regularized as per directives of University Grants Commission in future.

2. The argument of learned counsel for the appellant-petitioner is that in fact the Central University of South Bihar, School of Education in its minutes (Annexure-F) has recommended 8 permanent posts including one of language English whereas, 13 contractual posts including one of Language Teaching English whereas, the University has advertised 13 posts to be filled up on contractual basis including one of English recommended for filling up

on permanent basis. Thus, it is pointed out that the advertisement is contrary to the recommendation and, therefore, the advertisement is liable to be set aside.

3. Another argument raised by the learned counsel for the appellant-petitioner is that she is contractual appointee, therefore, she cannot be substituted with another contractual appointee as no *ad hoc* or temporary appointee can be replaced with another *ad hoc* or temporary appointee.

4. In the counter affidavit, the stand of the University is as under:-

“33. That in reply to the averments made in Para 14 it is stated that before issuance of this advertisement the University Administration had taken all the steps in accordance with the provisions of NCTE Regulation and had decided the Pedagogy of subjects, the faculty position was decided on the basis of specialization as per available vacant position as per the sanctioned strength for the regular position as well as contractual position and accordingly advertisement has been issued on 20.6.2016. Since in the Pedagogy of subjects under the head Education, the subject English was placed at Serial No. 8, hence it was under the contractual category of post. Thus, everything has been done as per norms without any scope of any discretion or arbitrariness on the part of the University.”

5. We have heard learned counsel for the parties and find no merit in the writ application. Whether a post is required to be filled up on contractual basis or on permanent basis is the decision of

the University. The University has decided to fill up two posts of Assistant Professor in English on contract basis. The recommendations of the Dean of School of Education has been considered by the University as per Paragraph 33 of the counter affidavit, as reproduced above to take a decision that the permanent post of Assistant Professor in the subject of English is not required to be advertised.

6. We do not find that petitioner, a candidate, has any right to claim that University should advertise only permanent post of Assistant Professor in English language. It is for the University to decide the manner of filling up of the post and not for the candidate to suggest that what should be the manner of filling up of a post.

7. We find that no such argument that a contractual appointee cannot be replaced with another contractual appointee can be examined at this stage. The question as to whether the petitioner is being replaced would arise only after appointments are made and not at this stage. Consequently, such argument does not require any consideration at this stage.

8. Consequently, we do not find any merit in the writ application. The same is dismissed.

Re.: L.P.A. No. 2142 of 2016.

The present Letters Patent Appeal is rendered

infructuous as the writ application itself has been decided on merits.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.11.2016
Transmission Date	