

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.143 of 2016

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1. Imteyaz Alam, Son of Md. Quadir, resident of Mohalla - Bal Kishun Ganj, P.O. Gulzarbag, P.S. Alamganj, District – Patna.
 2. Chandresh Kumar, Son of Ram Lobh Prasad, resident of village - Ram Nagar, P.O. Sedahan, P.S. Tarari, District – Bhojpur.
 3. Md. Jauwad Son of Abdul Shakur, resident of village - Basahiya Sheikh Tola, P.O. + P.S. Piparahi, District – Sheohar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Culture Department, Shastri Bhawan, New Delhi.
2. The Khuda Baksh Oriental Public Library through its Director, Ashok Rajpath, Patna.
3. The Director, Khuda Baksh Oriental Public Library cum Commissioner, Patna Division, Ashok Rajpath, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary, Adv. Mr. Prabhat Ranjan Singh, Adv.
For the Respondent-Union	:	Ms. Kanak Verma, CGC
For the Respondent-State	:	Mr. Anil Kumar Sinha, GA-1 Mr. Kumar Ravish, AC to GA-1
For Respondent Nos.2 & 3	:	Mr. Raghieb Ahsan, Sr. Adv. with Mr. Md. Shahab Khalil, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-10-2016

Heard Mr. Shashi Shekhar Tiwary, learned counsel appearing for the petitioners, Mr. Raghieb Ahsan, learned senior counsel appearing for the Khuda Baksh Oriental Public Library (hereinafter referred to as the 'Library'), Ms. Kanak Verma, learned Central Government Counsel for the Union of India and Mr. Kumar Ravish, learned Assisting Counsel to Government Advocate No.1 for the State.

In the nature of the order which this Court proposes to



pass it would not be required to delve deep into the merit of the case. Suffice it to say that the petitioners claim regularization having been appointed on daily wage basis against the post of Library Assistant since April, 2005 in so far as petitioner no.1 is concerned, July, 2009 in so far as the petitioner no.2 is concerned and August, 2007 in so far as the petitioner no.3 is concerned.

This stand of the petitioners is being contested by learned counsel appearing for 'the Library' and the Union of India on grounds of absence of sanctioned posts as well as on grounds that the petitioners were not in continuous service rather they were engaged from time to time as and when their services were required. In between such contest, a recommendation dated 28.1.2015 is present at Annexure-1 to the writ petition whereby a recommendation was made in favour of such of the workers who were appointed on contract/casual/daily-wage basis to explore the feasibility of their engagement on contract basis/for regularization on their respective post. However, before any final decision could be reached at, that a disengagement order was issued on 12.3.2015, a copy of which has been placed on record at Annexure- 'B' series to the counter affidavit filed on behalf of 'the Library' at page 50 and 51 of the present proceedings.

The writ petition was though initially filed for an



appropriate direction to the authorities of 'the Library' for regularization of the services of these petitioners on their respective post but an objection was taken by Mr. Ahsan, learned senior counsel appearing for 'the Library' to submit that the writ petition has been rendered infructuous because the services of the petitioners had already been terminated.

A Bench decision arising from CWJC No.4371 of 2015 (**Md. Ali vs. Union of India**) has also been enclosed in the counter affidavit of the Commissioner who happens to be the Incharge Director of 'the Library', a copy of which is annexed at Annexure- 'A' series and with reference thereto learned counsel for the Union of India and 'the Library' have submitted that a similar issue having been raised, the Bench has directed the Executive Committee of 'the Library' to consider the case of the petitioners as regarding the feasibility of their continuance and also for consideration of creation of sanctioned post in case there is any requirement for their services, for which request be made to the Government of India.

The said writ petition was disposed of in the following terms:

“9. None-the-less, if the petitioner had been allowed to continue in service for more than 16 years and shown door after filing of this writ application, the matter should be placed before the competent authority of the Library i.e. the Executive Committee of the Khuda Baksh Oriental Public Library and if it is found that the Press, in which the services of the petitioner were utilized on contract basis, is still



functional and its continuity would be in the interest of the Library, a fresh request be made by the Executive Committee through the proper channel to the Government of India for sanctioning and creating of the post of Press Operator. If such a request is received, the Government of India shall after applying its own objective/standard, take a conscious decision as to whether a post of Press Operator is required to be sanctioned for Library. In the event, if such a post is created that would be drawn for appointment by following the mandate of Articles 14 and 16 of the Constitution of India in which the case of the petitioner will also be considered and may be on account of his experience, who may be far better than the fresh candidates but then he will have no other additional weightage, save and except, relaxation of his age for the period he has worked on contract basis.

10. Before parting with, this Court, however, having found from the Three Man Committee report that a larger number of employees have been engaged on daily wage/ contract basis in the Library, would direct the Executive Committee to take a conscious decision as with regard to retaining them as well in accordance with law and if necessary, to advertise all those posts and make appointment only after following the mandate of Articles 14 and 16 of the Constitution of India so that a similar situation, alike the petitioner, does not crop up in future by retaining the persons appointed through backdoor even without following the mandate of Articles 14 and 16, creating hopes for their regularisation, ultimately showing the door such a practice can never be continued in a welfare State much less approved by this Court. All such appointment therefore, which are being conducted on daily wage/contract basis must be brought to an end as soon as possible by advertising those posts, only if they are sanctioned, and fill them up by strictly following the mandate of Article 14 and 16 of the Constitution of India.”

Ms. Verma, learned Central Government Counsel



appearing for the Union of India has with reference to Annexure-
'C' to the counter affidavit of the Union of India submitted that it is
in the light of the direction issued by the Bench in CWJC No.4371
of 2015 (**Md. Ali vs. Union of India and others**) that a request has
been made for creation of certain posts by the Commissioner, Patna
Division –cum- Director on 9.5.2016, however, no final decision
has been taken on the same.

Learned counsel for the parties are in agreement that
the present writ petition can also be disposed of on similar terms.

Having heard leaned counsel for he parties and
considering that there is no dispute regarding the engagement of
these petitioners albeit on casual basis and taking note of the
direction issued by this Court in the case of **Md. Ali** (supra) I deem
it fit and proper to dispose of this writ petition on similar terms with
a direction to the Executive Committee of 'the Library' to consider
the requirement of services of the petitioners and their continuation
against the posts of Library Assistant or any other suitable post in
their next meeting and in case the Executive Committee of 'the
Library' is of the opinion that the services of these petitioners is
required in the best interest of 'the Library' and a required number
of post needs to be created in this regard, it may make a request to
the Government of India through proper channel for creation of

posts as per requirement and any such request being made by the Executive Committee of ‘the Library’ would be considered by the Government of India and be disposed of expeditiously preferably within a period of four weeks of receipt of any such application.

It goes without saying that no sooner any such sanctioned post is created and ‘the Library’ proceeds to fill up the same it should consider the case of these petitioners by giving them age relaxation bearing in mind their work experience as well as the service rendered to ‘the Library’. It goes without saying that the appointment should be made adhering to the mandate of Articles 14 and 16 of the Constitution of India.

In case the Executive Committee of ‘the Library’ intends to engage Library Assistant(s) or daily wage worker(s) in the meanwhile, then instead of resorting to fresh engagement, they should consider the claim of these petitioners for appointment bearing in mind the past service rendered by them to ‘the Library’.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25-10-2016
Transmission Date	NA