

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6628 of 2013

=====

Nisha Kumari, wife of Krishna Murari, resident of Village- Dadhapi, P.O. + P.S. + Block- Goh, District- Aurangabad.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director, Bihar Education Project Board, Patna.
3. The District Education Officer, Aurangabad.
4. The District Programme Officer, Primary Education & Sarv Siksha Abhiyan, Bihar Education Project, Aurangabad.
5. Block Level Selection Committee, Kasturba Gandhi Balika Vidyalaya Goh, At + P.O. + P.S. Goh, District Aurangabad, through its Secretary.
6. The District Education Officer, Goh, At + P.O. + P.S. Goh, District- Aurangabad.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Mukesh Kumar Singh, Advocate.
For the State : Mr. Rana Bhupendra Narayan Singh, A.C.
to G.A. 10.
For the B.E.P.C. : Mr. Girijish Kumar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

5 05-12-2017 This writ application has been filed for quashing of the order dated 18.12.2012, passed by the D.P.O. Respondent No. 4, by which the appointment of the petitioner has been cancelled, and further seeking direction to allow the petitioner as to continue on the post with consequential benefits.

The petitioner made her application for appointment on the post of Teacher in 'Kasturba Gandhi Girls High School', and after being selected, joined on the post of 'Warden' on 01.12.2008 in Kasturba Gandhi Girls High School, Goh, Aurangabad. After



serving the said post for a period of nine months, she was restrained from doing the job, whereupon she approached the higher officials. Thereafter, she was again allowed to join the post on 17.04.2010. She did complete her training as per the direction of the higher officials. The documents, relating to her training have been brought on records vide Annexures-3 and 4 series, to the writ petition. The petitioner also completed her efficiency workshop training.

On 18.12.2012, the Respondent No. 4, passed an order that the appointment of the petitioner being found illegal, accordingly, her appointment was cancelled with immediate effect in terms of decision taken by the Block Level Selection Committee, Kasturba Gandhi Balika Vidyalaya, Goh, in its meeting dated 18.12.2012, which being held in pursuance to the Letter No./KGBV/4112 dated 21.08.2012 issued by the Director, Bihar State Project Council, Patna (Director, Bihar State Project).

Learned counsel appearing on behalf of the petitioner submitted that no notice or show cause was ever been given to her, prior to cancellation of her appointment. Thus, the order contained in Annexure-1 (Letter No. 1221 dated 18.12.2012) has been passed in violation of principle of natural justice and even there is no indication regarding the illegality found in her appointment.



A counter affidavit on behalf of the respondent no. 4 has been filed in this case before this Hon'ble Court.

It is evident that the petitioner has been engaged on the post of 'Warden' on 01.12.2008 in Kasturba Gandhi Balika Vidyalaya, Goh, Aurangabad, but her appointment was not made as per the procedure prescribed in Letter No. 4637 dated 27.09.2007, as contained in Annexure-A to the counter affidavit, issued by the State Education Project, which provides that selection of teacher/warden of 'Kasturba Gandhi Balika Vidyalaya' was to be made by a 'Block Selection Committee', headed by the D.P.O. 'Sharv Shiksha Abhiyan', but the appointment of the petitioner was made on 01.12.2008 by the Sanchalak of Goh Kasturba Gandhi Balika Vidyalaya, thus her selection was held illegal.

The appointment of the petitioner was not made by the competent authority, following the due procedure prescribed by the Director, as contained in Letter No. 4637 dated 27.09.2007 and the said fact does not find any rebuttal in the reply made by the petitioner, thus it is not in dispute that the appointment of the petitioner was not a valid appointment itself and by virtue of such invalid appointment the petitioner cannot claim any legal right to hold and continue on the said post.



I may also point out that the post of Warden, on which the petitioner was serving, is not a civil post rather it is a contractual job under the scheme known as 'Sharva Shiksha Abhiyan'.

Since the appointment of the petitioner is admittedly contractual in nature, therefore, she is not entitled to get any protection under Article 311 or any other provisions under the Constitution of India. She cannot claim similar kind of protection as available to the State employees as she being not holder of a civil post under the State Government.

In view of the discussions and observations made above, the order under challenge does not require any interference under Article 226 of the Constitution of India.

This writ application is, therefore, accordingly, dismissed.

U.K./-

U			
---	--	--	--

(Sudhir Singh, J)

