

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11731 of 2017

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1. Sanjay Gurmaita, Son of Ludar Gurmaita, resident of Barmotra, Police Station- Raghapur, District Supaul, Presently working as Night Guard engaged at Gandhi High School, Barmotra, Hulas, District- Supaul.
 2. Raj Narayan Bhagat, Son of Sita Ram Bhagat, resident of Village- Kumarganj, Police Station- Kishanpur, District- Supaul, Presently working as Night Guard engaged at Higher Secondary (+2) School, Kishanpur, District- Supaul.
 3. Nand Kumar Purve, Son of Shri Babuji Purve, resident of Pratapganj, Police Station- Pratapganj, District- Supaul, Presently working as Night Guard engaged at S.V.K. Girls High School, Pratapganj, District- Supaul.
 4. Satish Kumar, Son of Shri Ram Gopal Yadav, resident of Village- Parsarma, Police Station- Supaul, District- Supaul, Presently working as Night Gurd engaged at Lakhichand Sahu High School, Simrahi Bazar, District- Supaul.
 5. Md. Abdullah Ansari, Son of Md. Hammad Hasan, resident of Village- Surjapur, Police Station- Chhatapur, District- Supaul, Presently working as Night Guard at Hazi Nazibullah High School, Surjapur, District- Supaul.
 6. Kamal Mandal, Son of Late Bahuri Mandal, resident of Village- Basha, Police Station- Pipra, District- Supaul, Presently working as Night Guard engaged at Jawahar Premlal High School, Basha, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director (Secondary Education) Education Department, Government of Bihar, Patna.
4. The Director, Formal Education, Education Department, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. The Divisional Commissioner, Koshi Division, Saharsa.
7. The Regional Deputy Director of Education, Koshi Division, Saharsa.
8. The District Magistrate, Supaul.
9. The District Education Officer, Supaul.
10. The District Programme Officer, Establishment, Supaul.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 11964 of 2017

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1. Gajendra Kumar, Son of Late Saryug Mandal, resident of Village- Bhaddi, Police Station- Saur Bazar, District- Saharsa, presently working as Night Guard engaged at Rama Devi High School, Bhaddi, District- Saharsa.
2. Priyavrat Narayan Sah, Son of Shri Ganesh Sah, resident of Village- Nawahatta, Police Station- Nawahatta, District- Saharsa, presently working as Night Guard engaged at Project Girls Higher Secondary School, Nawahatta, District- Saharsa.
3. Deepak Kumar Bharti, Son of Shri Devendra Paswan, resident of Village- Bargaon, Police Station- Basnahi, District- Saharsa, presently working as Night



- Guard engaged at High School, Bargaon, District- Saharsa.
4. Jai Kumar Jha, Son of Shri Amarendra Jha, resident of Goutam Nagar, Gangjala, Police station- Saharsa, District- Saharsa, presently working as Night Guard engaged at Manohar High School, Saharsa, District- Saharsa.
 5. Ram Narayan Sharma, Son of Shri Faguni Sharma, resident of Village- Mahishi, Police Station- Mahishi, District- Saharsa, presently working as Night Guard engaged at Aso Devi Pyare High School, Mahishi, District- Saharsa.
 6. Naryan Choudhary, Son of Sri Babuan Choudhary, Resident of Village- Muradpur, Police Station- Nawahatta, District - Saharsa, presently working as Night Guard engaged at K.D. High School, Dharhara, Muradpur, District- Saharsa.
 7. Subhash Singh, Son of Shri Baldeo Prasad Singh, resident of Village- Sankarpur, Police Station- Balwahat, District- Saharsa, Presently working as Night Guard engaged at Apurva High School, Balwahat, District- Saharsa.
 8. Raju Kumar Jha, Son of Shri Mahakant Jha, resident of Village- Chainpur, Police station- Bangaon, District- Saharsa, Presently working as Night Guard engaged at High School, Chainpur, District- Saharsa.
 9. Bhuvneshwar Choudhary, Son of Late Yugal Choudhary, resident of Village- Maina, Police Station- Mahishi, District- Saharsa, Presently working as Night Guard engaged at Ganga Higher Secondary (+2) School, Maina, District- Saharsa.
 10. Mahadeo Jha, Son of Shri Chandra Shekhar Jha, Resident of Village- Panchgachhiya, Police Station- Bihra, District- Saharsa, Presently working as Night Guard engaged at Priyavrat High School, Panchgachhiya, District- Saharsa.
 11. Gulabo Mahto, Son of Late Baso Mahto, resident of Village- Jamhara, Police Station- Sour- Bazar, District- Saharsa, Presently working as Night Guard engaged at Government Tripur High School, Jamhara, District- Saharsa.
 12. Surendra Mahto, Son of Shri Bhim Mahto, Resident of Village- Bangaon, Police- Station- Bangaon, District- Saharsa, Presently working as Night Guard engaged at Kalawati High School, Bangaon, District- Saharsa.
 13. Sunil Kumar Jha, Son of Shri Kripanand Jha, resident of Village- Bangaon, Police Station- Bangaon, District- Saharsa, Presently working as Night Guard engaged at Government Fuldai Girls High School, Bangaon, District- Saharsa.
 14. Nunulal Yadav, Son of Late Rameshwar Prasad Yadav, resident of Village- Rakia, Police Station- Bihra, District- Saharsa, Presently working as Night Guard engaged at Vishwaneth High School, Rakia Bangaon, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, (Secondary Education) Education Department, Government of Bihar, Patna.
4. The Director, Formal, Education, Education Department, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. The Divisional Commissioner, Kosi Division, Saharsa.
7. The Regional Deputy Education Director, Kosi Division, Saharsa.
8. The District Magistrate, Saharsa.
9. The District Education Officer, Saharsa.
10. The District Programme Officer, Establishment, Saharsa.



.... Respondent/s

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Appearance :

(In CWJC No.11731 of 2017)

For the Petitioner/s : Mr. Ranjit Kumar Singh, Advocate

For the State : Mr. Amit Bhushan, A.C. to G.P. 17

(In CWJC No.11964 of 2017)

For the Petitioner/s : Mr. Ranjit Kumar Singh, Advocate

For the State : Mr. Ram Vinay Prasad Singh, A.C. to
G.A.12

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 15-09-2017

Heard learned counsel for the petitioners and State.

2. The petitioners have moved the Court for the following reliefs:

“That by the present writ petition, the petitioners hereof crave indulgence of this Hon’ble Court for issuance of an appropriate writ/writs, order/orders, direction/directions, rule or command, especially in the name of MANDAMUS, commanding and directing the respondents to take appropriate steps/measures in terms of the policy decision of the State Government to regularize the services of the petitioners on the post of Night Guards in their respective high schools where they have been engaged as per the direction of the Education Department vide Memo No. 11/YO-02-04/2007...29, dated 05.01.2009 issued by Respondent No. 03 and working as such till date. The petitioners further pray to restrain the respondents not to remove the petitioners from their respective posts of Night Guards continuing in the above noted high schools in terms of Letter No. 13/M-10-06/2010 (Part-III).....1401/1395, dated 21.06.2017 issued by Respondent No. 04 to fill up/substitute the post from the instructors of Informal Education as per the list appended therewith and/or any other relief(s) to which the



petitioners may be found entitled thereto as this Hon'ble Court may deem just and proper under the backdrop of the facts and circumstances of the present case."

3. The petitioners were engaged as Night Guards in view of the requirement for safeguarding the assets of the schools on a fixed honorarium of Rs. 1,500/- per month. Their grievance is that persons, who are now being adjusted/absorbed on vacant posts, are being asked to perform the duty which the petitioners performed and thus, their services have been said to be no more required.

4. Learned counsel for the petitioners submitted that they were appointed in terms of the direction given by the Director, Secondary Education and without there being any direction to the contrary and also to remove them or not to take work from them, the direction issued by the District authorities, who are subordinate to the Director, is beyond jurisdiction and fit to be interfered with. It was submitted that the petitioners have been working for quite some years and thus, they deserve to be adjusted on vacant posts and their services regularized. He submitted that at least the petitioners may not be disengaged.

5. Learned counsel for the State submitted that the stand of the petitioners is misconceived. It was submitted that the petitioners were engaged purely for performing the duty of Night



Guard as the requirement was felt at the relevant time, and now, when regular posts in the schools are being filled up, under the directions of the Hon'ble Supreme Court, the work of Night Guard, which the petitioners performed, shall be taken by such persons and thus, there is no requirement for them to be engaged any further. Learned counsel submitted that the petitioners were neither appointed on any post nor they were getting any scale of pay and also the same was not after following any procedure prescribed in law much less after fulfilling the requirements of Articles 14 and 16 of the Constitution of India.

6. In view of the aforesaid, the Court is unable to interfere in the matter and no positive direction can be passed in favour of the petitioners, primarily on the ground that they were engaged purely on a temporary basis on payment of honorarium for the specific purpose of being Night Guard, to protect the assets of the school in question, and when the work is sought to be taken by regularly appointed persons, on vacant sanctioned posts, the same cannot be faulted.

7. Accordingly, the writ petition stands disposed off.

8. However, in future, if posts are advertised for being filled up, the petitioners shall be entitled to participate in such selection process and the authorities may consider giving weightage



to them, on the basis of work done in the past, but the same shall also be at the level of the State, as a policy, on a uniform basis, without making any pick and choose.

(Ahsanuddin Amanullah, J)

P. Kumar

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