

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11663 of 2017

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1. Usha Saini, Wife of Jitendra Narayan Prasad, Resident of Village- Dhamar, Police station- Ara (Mufassil), District Bhojpur at Ara. At present Resident of Village- Sumerpur, P.O. Vijaipur, Police Station- Vijaipur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education (Primary), Government of Bihar, Patna.
2. The Principal Secretary, Department of Education (Primary), Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Gopalganj.
5. The District Programme Officer (Establishment), Gopalganj.
6. The Block Education Officer, Vijaipur, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh, Adv
Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. KAMESHWAR KUMAR -GP17
Mr. Amit Bhushan, A.C. to G.P.17.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 19-04-2018

Heard the learned counsel for the petitioner and counsel appearing on behalf of the State.

Petitioner has filed the present writ application for quashing of the office order contained in letter No.12551 dated 31.05.2016 passed by the District Programme Officer, Establishment, Gopalganj whereby the petitioner was restrained from marking attendance and perform the duty as teacher.

Learned counsel with reference to the order passed in C.W.J.C. No.12350 of 2016, Annexure-4, submitted that similarly circumstance 23 such teachers have approached this Court in the aforesaid writ



application and vide judgment dated 03.03.2017, the writ application was allowed. The relevant part of order dated 03.03.2017 reads as follows :-

‘Be that as it may, even if it is assumed that the Authority has passed right, wrong or indifferent order. But, in case the order has attained its finality since decision given by it has not been challenged before any competent forum, the settled legal principle would be that it would bind the parties and, as such, until that order is in existence, it would have binding effect upon the State authority.

That apart, after petitioners were appointed in compliance of the order passed by the Appellate Authority, without taking any action for their removal or termination, an order of stopping them from working or not paying salary, cannot be passed by the State authority.

Thus, in my considered view, the impugned order, as contained in Annexure-7 is not at all sustainable in law and, as such, the same is quashed and set aside. The petitioners would continue to work and their salary should be paid.’

After the order of the writ Court, the respondents have issued office order on 15.04.2017 whereby the petitioners of C.W.J.C. No.12350 of 2016 were allowed to work in the school and they were granted salary. Learned counsel submitted that notwithstanding the case of the petitioner is similar, the respondents have acted arbitrarily and without any justified reason discriminated the petitioner. In the counter affidavit, the respondents have taken the following stand :-

‘That Government of Bihar (Human Resources Development Department) has create the District Teachers Employment Appellate Tribunal in each district in the year 2008 for disposal fo the complaint regarding the Niyojan of Teachers and set up the duties and responsibilities of the District Teacher Employment Appellate Tribunal. From its perusal it will be transpired that appellant should be filed an appeal within 30 days. In this case, the petitioner hs field an appeal before district Teacher Employment Appellate Tribunal, Gopalganj after three years which is highly belated. From perusal of the Annexure-1 which is



judgment of D.T.E.A.T. Gopalganj no explanation has been given about delay. From perusal of the duties and responsibility of D.T.E.A.T. it will be transpired that Tribunal should follow the rules set up by the Human Resources Development Department, Government of Bihar which is very clear that a teacher should be trained and pass the examination of T.E.T. according to the panchayat Primary Teachers Rules, 2012. Hence it is clear that the order passed by the D.T.E.A.T. Gopalganj is not valid and genuine.’

From perusal of the pleading and considering the case of the petitioner in the light of the decision of this Court in C.W.J.C. No.12350 of 2016, the Court is of the view that respondents are required to follow their litigation policy, particularly Clause 4(c) of the same which is clear representation on behalf of the State Government that the State will treat the case of similarly circumstance on same footing. The decision of the District Teacher Appellate Authority is expected to be honoured unless it is reversed by a competent Court. The respondent, District Programme Officer cannot sit in Appeal and comment on the merit of the decision of the District Teachers Appellate Authority. The Court does not approve the statement made by respondent No.6 in the counter affidavit. Following the decision of this Court passed in C.W.J.C. No.12350 of 2016, the present writ application is also disposed of in similar terms.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

