

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1528 of 2016

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1. Rajeev Ranjan Upadhyay Son of Kamla Upadhyay Resident of village - Awari, Police Station - Marhowrah, District - Saran at Chapra
 2. Sanju Kumari Wife of Shi Ashok Singh Resident of village - Gangouli, Police Station - Masrakh, District - Saran at Chapra
 3. Priyanka Kumari Wife of Shi Ashok Singh resident of village - Jamalpur, Police Station Amnour, District - Saran at Chapra
 4. Babita Kumari Wife of Raju Kumar Sah Resident of village - Awari, Police Station - Marhowrah, District - Saran at Chapra
- ... Petitioners

Versus

1. The State of Bihar
 2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
 3. The Director, Primary Education, Bihar, Patna
 4. The District Magistrate, Saran at Chapra
 5. The Deputy Development Commissioner, Saran at Chapra
 6. The District Education officer, Saran
 7. The Block Education Extension Officer, Marhowrah, Saran at Chapra
 8. The Director State Project, Bihar Education Project Council, Bihar, Patna
 9. The District Superintendent of Education, Cum - District Programme Convener, Sarva Shiksha Abhiyan, Saran
 10. The District Programme officer, Sarva Shiksha Abhiyan, Saran
- ... Respondents

Appearance :

For the Petitioners	:	M/S Bindhyachal Singh & Satya Prakash, Advs.
For the State	:	Mr. Kishore Kumar Singh, AC to GP XXII
For Education Project	:	Mr. Girijesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 19-03-2018 Heard Mr. Bindhyachal Singh, learned counsel appearing for the petitioners, Mr. Girijesh Kumar, learned counsel on behalf of the Bihar Education Project and the State.

Mr. Bindhyachal Singh has submitted that the petitioners are continuing on the post of teaching and non-teaching staff in Kasturba Gandhi Balika Vidyalaya, Awari, Marhowrah, Saran at Chapra. They have been engaged on



contractual basis for a period of one year. However, considering their satisfactory performance they were allowed to continue for more than seven years. He submits that after serving for seven long years, now the respondents are taking fresh selection process for appointment only on the contractual teaching and non-teaching posts, as such, the contention of the learned counsel for the petitioners is that the petitioners can not be replaced by another set of ad hoc or contractual employee and such exercise is violative under Articles 14 and 16 of the Constitution of India.

Mr. Girijesh Kumar, learned counsel for the Bihar Education Project, at the very outset raised objection as to the maintainability of the writ application and referred to various orders passed in different writ applications.

Mr. Bindhyachal Singh referring to the judgment of the Apex court in the case of **Shri Anandi Mukta Sadguru S.M.V.S.J.M.S. Trust Vrs. V.R. Rudani** reported in **AIR 1989, SC 1607** and submitted tht the scope of writ jurisdiction has undergone a sea change and the scope of interference under Article 226 of the Constitution of India is now very wide. Mr. Singh has submitted that petitioners have rendered their valuable service during those seven years and at this stage if



they are replaced they will become over-age and may not be eligible for any appointment in the public sector.

On the other hand, Mr. Girijesh Kumar submits that earlier there was no advertisement in the newspaper and for the first time vide Annexure 7 the respondents have decided to invite applications for selection for more transparency in selection process and, as such, he submits that there is no arbitrariness in the action of the respondents and the petitioners may also take part in the selection process along with the applicant from open market. He submits that earlier there was no wider advertisement of the vacancy and on the basis of local notice limited applicants have participated whereas vide Annexure 7 wider publication has been made by the respondents inviting all are eligible to participate in the selection process, the petitioners may also participate in the same.

Mr. Bindhyachal Singh submitted that this act of the respondents in appointing ad hoc and replacing to the petitioners by another set of ad hoc is violative of Articles 14 and 16 of the Constitution of India and, as such, respondents may be restrained from adopting the process of appointment on ad hoc basis by replacing the ad hoc teaching and non-teaching employee.



Considering the rival submissions of the parties, if any scheme of appointment is ordered by the respondents in the matter of appointment of teaching and non-teaching staff in Kasturba Gandhi Balika Vidyalaya, Awari, Marhowrah, Saran at Chapra, the Court is of the view that this process of selection by way of ad hoc appointment is not in tune with the objective of such scheme of establishing Kasturba Gandhi Balika Vidyalaya, Awari, Marhowrah, Saran at Chapra. The respondents may take steps for regular appointment at the earliest preferably within a period of one year from today so that the teacher may not be aggrieved by the action of the respondents in replacing one set of ad hoc by another ad hoc.

Mr. Girijesh Kumar submits that under the scheme the appointment has to be made on ad hoc basis. If the scheme is for a limited period, then, one could understand, but, when the scheme is allowed to continue for longer period which is perennial in nature, then, respondents can not withheld the regular selection process for regular appointment.

Considering the totality of the facts and situation, this Court may inclined to interfere with the selection process after a period of one year, if no regular appointment made. As the advertisement was issued in the year 2016, they are



supposed to make appointment only up-to 2019, they have to undertake regular process of selection of regular teacher if the scheme is continuing for imparting instructions in Kasturba Gandhi Balika Vidyalaya, Awari, Marhowrah, Saran at Chapra, In view of the above the petitioners, if they applied for selection in terms of Annexure 7 in accordance with the guidelines considering the fact that they have acquired some experiences during the period they have worked on ad hoc post would be considered appropriately in the selection.

With the aforesaid, this applications stands **disposed off.**

(Anil Kumar Upadhyay, J)

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