

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.613 of 2018

- =====
1. The Commissioner, Kendriya Vidyalaya Sangathan, 18 - Institutional Area, Saheed Jeet Singh Marg, New Delhi - 110016.
 2. The Joint Commissioner, Kendriya Vidyalaya Sangathan.
 3. The Administrative Officer (Establishment) Kendriya Vidyalaya Sangathan, all represented through G.K. Srivastava, Addl. Commissioner (Admn) Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi - 110016.

.... Petitioner/s

Versus

1. Rajesh Kumar, son of Manoranjan Prasad resident of Mohalla Kunkun Singh Lane, P.O. Mahendru, P.S. Pirbahore, District Patna - 800006, Bihar.
2. The Union of India through the Secretary, Ministry of Human Resources Development.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kumar Ravish, Advocate
For the Respondent/s : Mr. S.D. Sanjay (Addl. Soc. Gen.)

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 15-01-2018

Kendriya Vidyalaya Sangathan is the petitioner before this Court aggrieved by the order dated 21.07.2017, passed in OA 359/2014 by Central Administrative Tribunal, Patna Bench, Patna.

The OA application of the private respondent, who was applicant before the Tribunal, stands allowed and a direction has been issued to appoint the private respondent on the post of Upper Division Clerk.

The private respondent was the successful candidate.



However, his claim for such appointment was rejected on the ground that the four years working experience on a post of Lower Division Clerk was on contract, and, therefore, such experience earned by the private respondent could not be taken into consideration as he was not working on a substantive post.

The Tribunal after considering the stand of the petitioners came to a conclusion that nowhere in the advertisement it was indicated that such applicant had to be working on a substantive post and not on contract basis. The requirement was working experience for a period of three years as a Lower Division Clerk.

The Tribunal has held as under :

“The above documents clearly show that the applicant’s entry in contract appointment is through an open selection process akin to regular appointment on a regular pay scale. The authorities involved in decision making are the State Government of Bihar and DDC of Bhojpur District. In the light of this, it is clear that the appointment has been given a nomenclature of ‘contract’ only for the sake of legal form and for all purposes it is in the nature of the work of an LDC as far as the experience is concerned. We cannot lose sight of the fact that in government systems, such contract appointments are resorted to for the sake of convenience, avoidance of legal



complications and lowering down the cost. Such contract appointees have no right of security of service. Still they accept such poorly paid jobs because of the unemployment in the society. In the light of this, it would be severely harsh and morally unjustified if in a direct competitive examination even their working experience is not counted as 'experience'.

11. The applicant had initially come on contract appointment through an open competition. He worked for more than four years when he applied in response to the advertisement issued by the respondents KVS. He submitted the experience certificate-cum-NOC signed by DDC. He succeeded again in the written test. It is gross injustice that he has not been selected on a technical ground and persons below him in the merit list have been selected. Our sense of substantive justice compels us to hold that delisting him by wiping out all his experience is unfair.

12. In conclusion, the OA is allowed. We hold that the experience certificate submitted by the applicant is valid as 'experience' mentioned in the notification. The applicant shall be appointed and shall be given notional benefits with respect to the persons next below in the merit list who was appointed, but without back



wages. No order as to costs. ”

Since rejection of the claim of the private respondent for appointment was irrational and arbitrary. The decision of the Tribunal to appoint him and gave him notional benefits etc. is not required to be interfered with.

Writ is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.01.2018
Transmission Date	NA

