

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20376 of 2011

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1. Surendra Prasad Yadav S/O Sri Banti Prasad Yadav Resident Of Village-Sirkahia, P.S. Manjhaulia, District-West Champaran.
 2. Raj Kumar Patel S/O Sri Nathuni Prasad Resident Of Village-Belwan Arahia, Tewari Tola, P.S. Bettiah Muffasil, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. The Regional Deputy Director Of Education, Tirhut Division, Muzaffarpur.
4. The District Education Officer, West Champaran, Bettiah.
5. The Headmaster, Project Girls High School, Kathaiya, Nautan, West Champaran.
6. The Headmaster, Project Girls High School, Madhopur, West Champaran, Bettiah.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate. Mr. Binod Kumar Singh, Advocate.
For the Respondent/s	:	Mr. Manoj Kumar, AC to GA-6

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 01-10-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioners are aggrieved by the order contained in Annexure-21, whereby the Director, Secondary Education rejected the claim of the petitioners on the ground that petitioners were appointed as a Peon by the District Education Officer who has no power to make such appointment.

3. Mr. Purushottam Kumar Jha, learned counsel appearing on behalf of the petitioners, has drawn the attention of



this Court to Annexure-23, which is a Circular of the State Government dated 12.10.1982. Clause-19 thereof indicates that the power to make appointment in the Project Schools after 01.01.1982 is vested with the District Education Officer.

4. In view of the Circular dated 12.10.1982, the Court cannot approve the reason assigned by the Director, Secondary Education rejecting the claim of the petitioners as the District Education Officer was competent to appoint the petitioners after 01.01.1982, therefore, the reason for rejecting the claim of the petitioners is patently wrong and cannot be sustained. Accordingly, Annexure-21 is quashed.

5. In addition thereof, on perusal of the materials available on record, it would be evident that similar matter was taken up to the L.P.A. Court and it has, in L.P.A. No. 39 of 2008, held out as follows:

“After having heard the government counsel, we are of the view that the L.P.A. is wholly misconceived and frivolous. As a matter of fact, the District Education Officer, by passing the order dated 17th October, 2000 has tried to over-reach the earlier order of this Court dated 17th March, 1990. By the order dated 17th October, 2000, he held that the very appointment of the respondent on ad-hoc basis was illegal. If that were so, the order dated 17th March, 1990 would not have been passed by the High Court in the earlier writ petition being C.W.J.C. No. 5120 of 1989 wherein the petitioner



challenged his termination with effect from 25th April, 1989.

2. It is pertinent to notice that the present respondent approached this Court by filing writ petition, C.W.J.C. No. 5120 of 1989 for quashing the order dated 9th May, 1989, whereby his services were sought to be terminated with effect from 25th April, 1989. This Court disposed of the writ petition by the following order:-

“This writ application has been filed on behalf of the petitioners for quashing an order dated 9.5.89 by which the services of the petitioners have been terminated with effect from 25.4.89. It appears that the petitioners were appointed in Project Girls High School on Class-III and IV posts by the then District Education Officer on the condition that they shall continue till the regular appointments against the posts in question. According to the petitioners before regular appointments could be made, their services have been terminated by the impugned order. As admittedly, the petitioner had been appointed by way of Ad-hoc arrangement it is not possible for this Court to issue any specific direction or order. However, the Regional Deputy Director, Tirhut Division, Muzaffarpur, is directed to look into the grievance of the petitioners that till the regular appointments are made against the posts, the petitioners should have been allowed to continue as per initial order. We may point out that if the petitioners have worked during the period from 25.4.89 to 9.5.90, when their services were terminated then they are entitled to payment in accordance with law. In such a situation there was no occasion to cancel their appointments with retrospective effect so as to debar them from receiving payment for the period for which they have worked. Any such decision should be taken preferably with two months from the date of production of this order.”



3. As a matter of fact, Single Judge rightly set aside the order of the District Education Officer, West Champaran passed on 17th October, 2000 as he simply acted in utter defiance and disregard of the earlier order of this Court passed on 17th March, 1990. The conduct of District Education Officer, West Champaran, Bettiah is highly reprehensible.

4. The consideration of the matter by the Single Judge is in the right perspective, justifying no interference by us.”

6. There is public policy behind finality of the decision. The Court cannot approve the action of the respondents to foment litigation even after the decision taken by this Court. The respondent authorities have compelled the petitioners to approach the Court time and again for the same relief. Such action of the respondents is in the teeth of their own litigation policy, 2011.

7. Learned counsel appearing on behalf of the respondents, by referring para-17 of the counter affidavit, submits that the due process of appointment was not followed. Such reason does not merit any consideration in view of the fact that the order contained in Annexure -21 has to be tested by the reasons in Annexure-21 of the writ application and cannot be supplemented by the counter affidavit. Reference in this connection may be made to the judgment of the Apex Court passed in the case of *Mohinder Singh Gill & Anr. v. The Chief*



Election Commissioner, New Delhi & Ors. reported in *AIR 1978 SC 851*, which is a authoritative pronouncement on the point that the reasons assigned in the public order cannot be supplemented by counter affidavit. The objection raised by the respondents stands cancelled.

8. Considering the aforesaid facts and circumstances of the case and on quashing of Annexure-21, the respondents are obliged to take fresh decision for grant recognition to the services of the petitioners with all consequential benefits within a period of four months from the date of production of a copy of this order.

9. With the aforesaid, the writ application is allowed and disposed of.

(Anil Kumar Upadhyay, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

