

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21441 of 2018

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Seema Kumari Wife of Shri Sudhir Kumar Pandey, Resident of Village-
Hajpurwa, P.S.- Warisnagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of H.R.D. Department of School Education and Literacy, Shastri Bhawan, New Delhi
2. The Secretary Ministry of H.R.D. Department of School, Education and Literacy, Shastri Bhawan, New Delhi
3. The Under Secretary to the Government of India, Ministry of H.R.D. Department of School Education and Literacy, Shastri Bhawan, New Delhi
4. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
5. The Director, Primary Education, Government of Bihar, Patna.
6. The Director, Bihar State Project Council, Bihar, Patna.
7. The District Magistrate, Samastipur, District- Samastipur.
8. The District Education Officer, Samastipur, District- Samastipur.
9. The District Project Officer, Samastipur, District- Samastipur.
10. The District Project Officer, Primary Education and Sarva Shiksha Abhiyan, Samastipur, District- Samastipur
11. The Programme Co-operative Bihar Mahila Samakhya Society, Samastipur, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrityunjay Kumar
For the Respondent/s	:	Mr.Jitendra Kumar Roy 1,SC-13
For the B.E.P.C.	:	Mr. Girijest Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 17.06.2019

The present writ petition has been filed for quashing the letter dated 16.02.2016 issued by the Director, Bihar State Project Council, District-Patna, whereby and whereunder it has been directed to change the nomenclature of the post being held by the petitioner from Full Time Teacher to Part Time



Teacher. The petitioner has further prayed to direct the respondent authorities to treat the service of the petitioner as a permanent employee of the school and, accordingly, fix the pay-scale.

At the outset, the learned counsel for the respondent no. 6 i.e. the Director, Bihar State Project Council, Bihar, Patna referring to the counter affidavit filed in the present case, has submitted that the *Bihar Shiksha Pariyojna Parishad* is an organization registered under the Society Registration Act, and is at present implementing a Time Bound Programme of universalization of elementary education known as “Sarva Shiksha Abhiyan” and for the successful running of the said programme various posts under the “SSA” Management Structure has been created for the State as well as for the District and Block level office and the post are being filled either by deputation or appointment on short term contract basis. It has been further submitted that Kasturba Gandhi Balika Vidyalaya (hereinafter referred to as ‘KGBVs’) are running in the State of Bihar since the year 2005 where 100 girls of SC, ST, OBC, Minority and BPL category are enrolled for getting elementary education with a view to bring them in the main stream of the society and such girls are provided with free food



and residential facilities. It is stated that there are 535 KGBVs in the State. It has been further stated in the counter affidavit filed by the respondent no. 6 that the State adopted the Government of India norms regarding number of teaching and other staff essential for providing residential education to 100 girls and as per the requirements. In furtherance of the said letter dated 27.11.2007, issued by the State Project Director, BEPC in favour of all DSE-cum-District Programme Coordinator of all the District in Bihar, provision had been made for selection and appointment of 13 staff-viz-one warden cum teachers, three subject specialist full time female teachers, three female teachers for vocational training, one accountant, one chief cook, two assistant cooks, one peon and one night guard. Further, their service conditions were also decided whereby part-time teachers were appointed for vocational training with per day honorarium @ Rs. 200/- for maximum of 20 days in a month. In the year 2011 appointment of part time teachers in vocational course was banned vide letter dated 05.09.2011 which was issued by the State Project Director, BEPC and the post was considered as dying post in such a way that as they will leave the job, the post will be abolished. It is further stated that the letter dated 27.11.2013 issued by the State Project Director,



BEPC in which it was clarified that the appointment should be made as per guideline which is enclosed with the letter. It was decided that the vocational training programme will be done by Bihar Board of Open Schooling and Examination (BBOSE) which is a Government organization in this regard letter dated 16.04.2012 issued by the SPD, BEPC. In spite of this, none of the part-time teachers were removed from the service and their contracts were made to continue. It has also been stated in the counter affidavit that till 2014-15 fund was provided for KGBBs teachers and staff in lump-sum manner but in the financial year 2015-16, the Government of India made post-wise provision for salary wherein there was no space for full time teacher and since the programme is run with the Government of India support and guidance, no deviation can be made from the same. In the batch of 2015-16, as approved by the Government of India, provision has been made for three part time teachers @ 5,000/- per month besides there being another head also for vocational training. In such view of the matter, it is stated that in the 77th meeting of State Executive Committee of Bihar Education Project Council (BEPC), the designation of the post “Full Time Teacher”, to solve the technical hindrance and to differentiate between above said posts, the name of part-time



teachers has been changed to “Vocational Training Instructress” because their work is associated with providing vocational training. Nonetheless, the learned counsel for the respondent no. 6 has raised a question of maintainability of the present writ petition, relying upon a judgment rendered by a coordinate Bench of this Court dated 19.09.2016 passed in CWJC No. 7625 of 2016, relevant paragraphs whereof are reproduced herein below:-

“The issue raised by the three petitioners in the present writ application, especially with regard to the decision contained in Annexure-15 comes within the domain of policy making, therefore, this Court will not delve into.

There is no dispute or argument that the scheme, which is known as Kasturba Gandhi Balika Vidyalaya Scheme, is being implemented and carried on by the State but is the baby of the Central Government. The decision contained in Annexure-15, dated 16.2.2016 is part of the same deliberation and exercise. The Court is informed that the decision has been taken keeping the above background. The State is not the employer. At the best, they are agents and not the principal.

If this be so, the Court cannot pass any



directive to hire these petitioners on a permanent basis with a pay scale etc.

The remedy for these petitioners lies elsewhere and not before the Court keeping in mind the nature of engagement.

Writ is dismissed.”

The learned counsel for the respondent no. 6 has further relied upon a judgment dated 30.01.2019 passed by a coordinate Bench of this Court in CWJC No. 6153 of 2016, CWJC No. 6306 of 2016 and other analogous cases wherein under similar circumstances, a learned single Judge of this Court has held that since the nature of engagement /appointment of the writ petitioners who are contractual appointees under a scheme launched by the Government of India in Kasturba Gandhi Balika Vidyalaya, no dispute relating to the service conditions of such writ petitioners is amenable to the writ jurisdiction under Article 226 of the Constitution of India.

The aforesaid judgment rendered by the learned Single Judge dated 27.02.2018 passed in CWJC No. 6306 of 2016 has been upheld by the learned Division Bench in L.P.A. NO. 414 of 2018 by a judgment dated 30.01.2019, relevant paragraphs whereof are reproduced herein below:-

“2. The Appellant herein, was a part-time teacher in Urdu, who had been inducted in Kasturba Gandhi Balika



Vidyalaya, Mohiudddin Nagar, within the district of Samastipur (hereinafter referred to as the "KGBV") by an order dated 07.11.2007 contained in memo No. 1418. Pursuant thereto, she continued to work at the said Vidyalaya where her assignment was converted as a full-time Urdu teacher to teach Urdu where 10-20 students belonging to the minority community were reading. She discharged her services as a full-time teacher, but, again by an order dated 28.01.2014, the status of the appellant was converted to part-time teacher. 3. Learned counsel for the Appellant submitted that in pursuance to her appointment, the appellant was continuously discharging her duty and her contract was extended from time to time. It was submitted that several writ applications came to be filed, as vide Memo No. 835 dated 16.02.2016, the Director, State Project Council, Bihar, Patna, communicated that all teachers in "KGBV", who were full-time teachers would now be referred to as part-time teachers. The part-time teachers, legally and validly appointed, would now be known as Vocational Training Instructors. Prior to their extension of the contract, a consent of part-time teacher was to be taken, accepting the nomenclature of Vocational Training Instructor. It was also stated in the aforementioned letter that the post of Vocational Training Instructors would be a dying cadre and with the completion of the contract, the post would be abolished. Learned counsel further submitted that the aforementioned memo converting the post of part-time teacher as Vocational Training Instructors amounts to not only abolishing the post after completion of contract, but also treating her as a vocationalist though she has



always been a subject teacher and never imparted vocational course to the students.

5. Learned counsel for the appellant contended that the learned Single Judge has failed to appreciate that the power to abolish or rename any post, or for that matter to declare a post as “dying cadre” does not lie within the jurisdiction of the State Project Council as the Bihar Project Council is merely an instrumentality for implementing Sarva Shiksha Abhiyan Scheme of the Central Government. It was further argued that when the policy of Central Government is to continue the post of the Part Time Teacher “KGBV”, the Bihar Project Council has exceeded its jurisdiction by abolishing the post of part-time teachers, contrary to the decisions of the Central Government. Furthermore, the learned Single Judge has clearly erred in holding that the appellant cannot claim protection under Article 311 of the Constitution of India as the respective petitioners in the writ application had, in fact, challenged the decision of the State Project Council and had not merely come for their individual rights. The decision to change the nomenclature of part-time teacher as “Vocational Training Instructors” and reducing their Honorarium and further in declaring the said posts of temporary teachers as a dying cadre, was clearly erroneous, illegal and without jurisdiction, and thus, anullity in the eye of law.

7. Contesting the claim of the Appellant-respondent No.4, who is the State Programme Officer, in the Bihar State Project Council Office, has submitted that the “KGBVs” were started on the guidelines of Government of India with Model I, II & III. Model I and II



had the provision of residential teaching for 100 and 50 girls respectively, whereas Model-III had the provision of residential facility for 100 girls with their education at middle school, attached with the KGBV, as day scholar. As per letter dated 21.02.2008, issued by the Ministry of Human Resources, Government of India in the year 2008, all the "KGBVs" of the state were converted into Model-III as per the decision of Government of India.

8. It was further contended that the State, adopted the Govt. of India norms regarding number of teaching and other staff essential for providing residential education to 100 girls as per the requirements. In the furtherance of the letter dated 27.11.2007 issued by the State Project Director, BEPC in favour of all DSE-cum-District Programme coordinator of all the Districts in Bihar provision was made for selection and appointment of 13-Staff-viz-one warden cum teachers, three subject specialist full-time female teachers, three female teachers for vocational training, one accountant, one chief cook, two assistant cooks, one peon and one night guard. Further, their service conditions were also decided whereby part-time teachers were appointed for vocational training with per day honorarium @ Rs. 200/- for maximum of 20 days in a month.

9. It was pointed out by the Respondents that in the year, 2011 appointment of part-time teachers in vocational course was banned vide letter dated 05.09.2011 which was issued by the State Project Director, BEPC and the post was considered as dying post in such a way that they would leave the job on expiry of their



term of contract and the post will be abolished. It was further stated that vide letter dated 27.11.2013 issued by the State Project Director, BEPC, it was clarified that the appointment should be made as per the guideline which is enclosed with the letter. It was decided that the vocational training programme will be done by Bihar Board of Open Schooling and Examination (BBOSE) which is a Government organization in this regard letter dated 16.04.2012 issued by the SPD, BEPC. In spite of this, none of the part-time teachers were removed from the service and their contracts were made to continue.

12. Learned counsel for the Respondent further contended that in the 77th meeting of State Executive Committee of Bihar Education Project Council (BEPC) the designation of the post "Full Time Teacher" (for subject teaching) was changed as "Part-time teacher" to solve the technical hindrance and to differentiate between above said posts, name of part-time teachers has been changed to "Vocational Training Instructor" because their work is associated with providing vocational training.

13. It was also stated that in spite of the above changes vide order memo no. 835 dated 16.02.2016 (Annexure-11 to the writ application), all service conditions were kept unchanged and no other change was made. It was decided to take the consent of the part-time teacher and vocational training instructor regarding change in name of post before issuing their order of extension of contract.

14. It is pertinent to mentioned here that vide order memo no. 835, dated 16.02.2016, (order impugned in writ). It was decided to



take work from the Vocational Training Instructor on weekly basis or on other holidays only. This order was later amended vide memo No. 2865, dated 31.05.2016 which makes the provision of honorarium @ Rs. 200/- for max. of 20 days in a month, as earlier.

15. Learned counsel for the State next contended that no other change in the service conditions of full-time teacher and part-time teacher (Changed name 'part time teacher' & 'vocational training instructor' respectively) had been made except the change in nomenclature and such changes have been made due to technical reasons.

16. Having heard learned counsel for the appellant and learned counsel appearing on behalf of the respondents and after perusing the material on record, it is clear that the present appellant Perween Kauser was appointed on contractual basis to the post of part-time teacher in the "KGBV", which was a school under the Sarva Shiksha Abhiyan, a programme run by the Government of India. The engagement was purely contractual under its guidance and purely supported out of the funds provided by the Government of India. The entire project was accorded approval under instructions received from time to time from the Government of India. Further, in accordance with the budget approved by the Government of India, provision was made for either part-time or full-time teachers or for those engaged in vocational training. The Project Director, (BEPC) vide letter dated 12.10.2015, made a request that full-time teachers be continued, but the said request was not approved by the Government of India. Thus, the designation full-time teacher was



changed to part-time teacher and to solve the technical hindrance and to differentiate between the said post the nomenclature “part-time teacher” was changed to “Vocational Training Instructors” as they were, in fact, associated with providing vocational training. This was done squarely to meet the 2015-16 Government of India fund allocation to the “KGBV” in 2015-16. Learned counsel for the Appellant has failed to demonstrate anything to the contrary from the Guide lines of the Government of India. We also find that such a decision taken by the Project Director, BEPC was in tune with the directions of the Government of India and such policy making being in the domain of the State does not warrant interference by this Court under Article 226 of the Constitution of India. The implementation of the scheme in it’s altered form even other wise does not seem to offend either Article 14 or 16 of the Constitution of India.

20. In that view of the matter also we are also of the firm opinion that the policy decision taken by the order impugned in the writ application, had already been tested and the prayer of the petitioners therein had been found to be untenable. The same holds good in the facts and circumstances of the present case.

21. For the foregoing reasons, and also in view of the settled principles of law regarding contractual employees, we do not find any infirmity in the order of the learned Single Judge which is accordingly upheld.

22. The Letters Patent Appeal stands rejected.”

The learned counsel for the petitioner herein does not



deny the aforesaid position as existing in law.

Having regard to the facts and circumstances of the case and considering the aforesaid judgment rendered by the learned Single Judge as also the learned Division Bench of this Court, no different view can be taken by this Court, hence the writ petition stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2019
Transmission Date	

