

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.426 of 2018

In

Civil Writ Jurisdiction Case No.7266 of 2016

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1. Kalyani Kumari, D/o- Sri Shankar Mishra, Village and Post- Rampur Dih, P.S. Sahkund, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Nath Nagar, District- Bhagalpur.
 2. Madhumala Kumari, Wife of Sri Gopal Prasad Thakur, Village and Post- Sonbarsa, P.S. Bihpur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Narayanpur, District- Bhagalpur.
 3. Pushpa Rani, D/o- Sri Sitaram, Village and Post- Girdhari Lal Lane, Mirjanhat, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Goradih, District- Bhagalpur.
 4. Kajal Kumari, D/o- Sri Bijay Shankar, Village and Post- Barhai Tola, Bhikhanpur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Goradih, District- Bhagalpur.
 5. Amrita Sah S/o- Sri Ajay Shankar, Village and Post- Barhai Tola, Bhikhanpur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Goradih, District- Bhagalpur.
 6. Sweta Bharti, Wife of Sri Sahdeo Pathak, Village and Post- Bhagban Mahabir Path, P.S.- Nath Nagar, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Narayanpur, Manohar, District- Bhagalpur.
 7. Shila Kumari. W/o- Sri Ashoka Kumar Singh, Village and Post- Khankitta, P.S. Sabour, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Nathnagar, Manjhia, District- Bhagalpur.
 8. Bina Kumari, W/o- Sri Pravin Kumar Mishra, Village and Post- Rangra, P.S.- Gopalpur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Rangra, District- Bhagalpur.
 9. Tara Kumari Sinha W/o Sri Rakesh Sinha, Village and Post- Simanpur, P.S.- Pirpainti, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Simanpur, Pirpainti, District- Bhagalpur.
 10. Munni Kumari D/o Sri Sanjay Kumar, Village- Ramasi, P.O.- Sakrama, P.S.- Sanhaura, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Sunhaura Arar, District- Bhagalpur.
 11. Anjana Kumari, W/o Sri Kundan Kumar Thakur, Village and Post- Rangra, P.S. Gopalpur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Rangara, District- Bhagalpur.
 12. Bibha Kumari D/o Sri Dipak Kumar, Village and Post- Simanpur, P.S. Ishipur, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Pirpainti Simanpur, District- Bhagalpur.
 13. Bimla Kumari D/o Sri Shankar Prasad Sah, Village and Post- Arar, P.S.- Sanokhar, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Sanhaura Arar, District- Bhagalpur.
 14. Aaprajita Kumari W/o Prabhu Dayal Singh, Village and Post- Moul Tola,



Pirpanti, P.S. Pirpanti, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Pirpanti Sinapur, District- Bhagalpur.

15. Juli Kumari Wife of Sri Manoj Kumar Mishra, Village and Post- Arar, P.S. Sanokhar, District- Bhagalpur at present posted at Kasturba Gandhi Balika Vidyalaya, Narayanpur, District- Bhagalpur.

... .. Appellant/s

Versus

1. The Union Of India through the Secretary, Ministry of Human Resources Development, Department of School Education and Literacy, Sastri Bhawan, New Delhi.
2. The Secretary, Ministry of Human Resources Development, Department of School Education and Literacy, Sastri Bhawan, New Delhi.
3. The Director, Kasturba Gandhi Balika Vidyalaya, Government of India, New Delhi.
4. The State of Bihar through the Principal Secretary, Ministry of Human Resources Development, Education Department, Patna.
5. The State Project Director, Bihar State Project Council, Bihar, Saidpur, Rajendra Nagar, Patna.
6. The District Magistrate cum Chairman, Bihar Education Project, Bhagalpur.
7. The District Education Officer cum District Programme Co-ordinator, Bhagalpur.
8. The District Programme Officer, Primary Education and Sarb Siksha Abhiyan (SSA), Bhagalpur.
9. The Block Education Extension Officer, Nath Nagar Block, Bhagalpur.
10. The Block Education Extension Officer, Goradih, Bhagalpur.
11. The Block Education Extension Officer, Rangra Chowk, Bhagalpur.
12. The Block Education Extension Officer, Narayanpur, Bhagalpur.
13. The Block Education Extension Officer, Pirpanti, Bhagalpur.
14. The Block Education Extension Officer, Sanhaura, Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Pramod Kumar Singh, Advocate
For the Union of India	:	Mr. S. D. Sanjay, Addl. S. G.
For the State	:	Mr. Vinay Kumar Mishra, AC to AAG-15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-11-2019



In the instant appeal, the writ petitioners- appellants herein challenged the order dated 27.02.2018 passed by a learned Single Judge of this Court in CWJC No.7266 of 2016 titled as Kalyani Kumari & Ors. v. The Union of India & Ors..

The operative portion of the order reads as under:-

“Before discussing the issue in question, in my opinion, it would be relevant to take note of the background of the Institution i.e. ‘Kasturba Gandhi Balika Vidyalaya’. The ‘Kasturba Gandhi Balika Vidyalaya’ (hereinafter referred to as K.G.B.V.) Scheme was launched by the Government of India in August, 2004 for setting up residential School at upper primary level for girls belonging predominantly SC, ST, OBC and Minorities, in difficult areas. Initially, it was running as a separate Scheme but with effect from 1st April, 2007 it merged with the ‘Sarve Shiksha Abhiyan’ (hereinafter referred to as S.S.A. Programme). With coming into force of Right to Education Act, 2009 with effect from 1st April, 2010, opening of K.G.B.Vs. has been extended to all educationally backward Blocks with rural female literacy below the national average as per Census, 2001. The objective behind opening of K.G.B.V. is to ensure access and quality education to the girls from disadvantaged group by setting up residential schools at upper primary level.

As per the guidelines of the Government of India, the S.S.A. State Implementation Society will be the implementing agency of K.G.B.V. at State Level, therefore, funds made available as to run such Institutions are routed through the S.S.A. Society of the



State. The funding pattern of the Central Government/State/Union Territories for the K.G.B.V. Scheme will be the same as per the 'Sarva Shiksha Abhiyan', as it is a component of S.S.A. with effect from 1st April, 2007. The Government of India directly releases funds to the S.S.A. State Implementation Societies. The State Government also releases its share to the State Implementation Societies.

The initial engagement of the petitioners was made as 'Part Time Teacher' which subsequently renamed as 'Vocational Training Instructors'. Such engagement was contractual in nature under the scheme of S.S.A., in 'Kasturba Gandhi Balika Vidyalaya. Any dispute relating to their initial contractual appointment/extension of contractual period, and any change in the service conditions cannot be a subject matter of writ jurisdiction of this Court. Since the appointment of the petitioner is admitted ly contractual in nature, therefore, the petitioners are not entitled to get any protection under Article 311 or any other provisions under the Constitution of India. They cannot claim similar kind of protection as available to the State Employees. The petitioners being appointed by the Bihar Education Project Council, which is a registered society under the Societies Registration Act for implementation of objectives of 'Sarva Shiksha Abhiyan'. The petitioners being not a civil servant of the State, therefore, they cannot claim any protection by Article 311 of the Constitution of India. The petitioners have no such substantive right to continue on the post beyond the terms and conditions of their contractual appointment, as also, after expiry of the contractual



period with any extension made by the Selection Committee. Therefore, no mandamus can be issued for enforcement of a non-existent right.

In all these writ petitions, the petitioners are aggrieved by the decision taken in the 77th meeting of the State Executive Committee dated 08.01.2016 of Bihar Education Project Council, by which the post of 'Part Time Teacher' being re-named as 'Vocational Training Instructors' and the said post being held as Dying Cadre.

In view of the observations and discussions made above, especially taking into consideration of the nature of engagement/appointment of these petitioners i.e. contractual appointment, under a scheme launched by the Government of India, in 'Kasturba Gandhi Balika Vidyalaya', I am of the considered opinion that such dispute relating to the service conditions of the petitioners is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, we find no reason to interfere with the reasoning adopted and conclusion arrived at by the learned Single Judge. There is no perversity or illegality in consideration of the factual matrix in its totality or on the issue of application of law. The appointment of the petitioners was in relation to a specific project of Kasturba Gandhi Balika Vidyalaya and that too on contractual basis for a period of one year, subject to further extension by the Selection Committee.



Their appointments not governed by statutory rules, more so without adhering to the settled principles of law or following due process, on compassionate basis, were allowed to be continued perhaps based on humanitarian grounds. With the enforcement of the Right to Education Act, 2009, all appointments, more so, of public nature have to be in accordance with law, after following due process and as such in view of the law laid down by the Apex Court in **Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1**, petitioners’ appointment cannot be regularized. By change of nomenclature, their posts have been held to be classified or categorized as a dying cadre which is only to protect their interest.

As such, we find no merit in this appeal and the same stands dismissed.

(Sanjay Karol, CJ)

(Dinesh Kumar Singh, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2019
Transmission Date	

