

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1064 of 2019

In

Civil Writ Jurisdiction Case No.8676 of 2016

Minu Jamuar, (F) aged about 56 years, Wife of Deepak Sahay Jamuar,
Resident of H/o Mrs. Bimla Baria, Near DVC Gate, Jakkanpur, Patna- 1, P.S.-
Jakkanpur, District- Patna

... .. Appellant/s

Versus

1. The D. A. V College, Managing Committee (DAVCMC), through its General Secretary, Chitra Gupta Road, New Delhi-110055.
2. The General Secretary, DAV College, Managing Committee, Chitra Gupta Road, New Delhi, 110055.
3. The Assistant Regional Director (Patna Zone) DAV Public School, Arya Samaj Mandir Complet, New Bailey Road, Patna. 801503.
4. The Principal DAV Public School, Bihar State Electricity Board Colony, New Punaichak, Patna. 800023.
5. The Bihar State Power (Holding) Company Ltd. through its Chairman-Cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna.
6. The Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna.
7. The General Manager, H.R. and Admin, the Bihar State Power Holding Company Ltd. Cum Chairman of the Local Managing Committee of the DAV Public School BSEB Colony, having Officiate Vidyut Bhawan, Bailey Road, Patna.
8. The Secretary, Central Board of Secondary Education, Patna Region, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Adv. Mr. Deepak Sahay Jamuar, Adv.
For D.A.V.	:	Mr. Anil Kumar Singh, Adv.
For C.B.S.E.	:	Mr. Vinay Krishna Tripathy, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-10-2019

Heard Shri Anjani Kumar, learned senior counsel



for the appellant, Shri Vinay Krishna Tripathy for the Central Board of Secondary Education and Shri Anil Kumar Singh for the respondent D.A.V. College.

The appeal is directed against the impugned judgement dated 29th of July, 2019 whereby the learned Single Judge has declined relief to the appellant on the termination of her tenure assignment as a teacher in the D.A.V. college on the ground that the order is not stigmatic and that *mala fides* could not be established.

Shri Anjani Kumar submits that the learned Single Judge, while appreciating the facts on record, did not consider the personal malice alleged of the 3rd respondent which also went to the extent of alleging that the appellant was not allowed to continue on account of a caste prejudice.

On the issue relating to the maintainability of the petition, learned counsel submits that the learned Single Judge has rightly held the petition to be maintainable, but has erroneously construed the facts so as to dismiss the petition on the ground of absence of *mala fides* and bias as alleged on behalf of the appellant.

Learned counsel for the respondents, on the other hand, contends that the writ petition itself was not maintainable



as the institution did not fall within the definition of either a “State” under Article 12 of the Constitution or an “Authority” as understood under Article 226 of the Constitution.

Apart from this, even assuming for the sake of arguments that such a writ petition was maintainable, the appellant had no right to continue inasmuch as the tenor of appointment was a simple contractual engagement for a fixed term with no permanency attached to the post. In such circumstances, the claim of continuance as a matter of right was not tenable.

Thirdly, it is submitted that the allegations of *mala fides* have been clearly denied by the answering respondents and there was no material, much less a substantial material, to substantiate the same.

We have considered the submissions raised and on the issue of maintainability we find that the judgement of the Supreme Court in the case of **Marwari Balika Vidyalaya Vs. Asha Shrivastava & Ors. (Civil Appeal No.9166 of 2013)** was in respect of a school which was on the grant-in-aid of the State.

Similarly, the judgement in the case of **Raj Kumar Vs. Director of Education & Ors., reported in**



(2016) 6 SCC 541 was an institution where there was a consideration of a statutory control in favour of an employee as envisaged under Article 8(2) of the Delhi Education Act, 1973. The third decision, on which heavy reliance has been placed by the learned counsel for the appellant is the judgement in the case of **Ramesh Ahluwalia V. State of Punjab & Ors.**, reported in **(2012) 12 SCC 331**.

We are of the considered opinion that the 1st two cases referred to above stand on a different footing, inasmuch as one of the cases involved the control of the State on account of the institution being on the grant-in-aid list whereas the other case clearly indicated a semblance of a statutory control under the Delhi Education Act, 1973. These two ingredients in the present case are completely absent and, therefore, the ratio of the said decisions would not be attracted with regard to the facts of the present case. There is no material to demonstrate that there is any statutory control over the service conditions of the appellant or even otherwise she was receiving any emoluments from State funds. Learned counsel submits that the institution has been established on the land of the Bihar State Power Holding Company Limited which is a Government Company. A mere arrangement allowing a society to run an



institution for the benefits of its employees will not automatically make the institution an authority under Article 12 of the Constitution as a subsidiary of the Power Holding Company. Even otherwise, as stated above, in the absence of any such control either by the State or otherwise, the said principle would not be attracted.

Coming to the third judgement in the case of Ramesh Ahluwalia (supra), we would like to mention that after the said judgement was delivered, the Apex Court came up with the judgement in the case of **Committee of Management, Delhi Public School & Anr. Vs. M.K. Gandhi & Ors., reported in (2015) 17 SCC 353** holding that a writ petition in such a matter would not be maintainable. We are, therefore, bound by this later decision rendered by the Supreme Court on the issue apart from the findings and observations recorded by us hereinabove.

Coming to the issue of the tenor of appointment, the same remains undisputed that the appointment was contractual and for a fixed period. This, therefore, does not confer any consequential rights on the appellant to claim continuance in the institution.



On *mala fides*, suffice it to say that the appellant has made an improvement before the High Court as it appears that when she had sent a legal notice to the institution which is part of the record of the writ petition, no such allegations had been made. It is, therefore, apparent that the allegations of *mala fides* have been made passingly without any substantive material to support the same. Hence, this plea is also not tenable. Even otherwise *mala fides* or allegations of the like nature are more easily made than proved.

Learned counsel for the appellant then urged that apart from this the appellant has been put to a great disadvantage not only with regard to her employment, but also with regard to the education of her child which was an additional benefit by virtue of her employment.

In the background above, it is open to the appellant to approach the institution for any benevolent consideration and any such consideration by the institution can be made independently irrespective of the findings recorded by us hereinabove.

The appeal is dismissed with the above



observations.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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