

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.414 of 2018

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Smt. Perween Kauser C/o Arif Hasan Khan, resident of village Kanhouli,
Police Station Mohiudin Nagar, District Samastipur.

... .. Appellant/s

Versus

1. The Union of India through the Director Kasturba Gandhi Balika Vidyalaya
2. The Under Secretary to the Government of India, Ministry of Human Resources Development of School Education and Literacy.
3. The State of Bihar through the Secretary, Education Department, Bihar, Patna.
4. The Director, State Project Council, Bihar, Patna.
5. The District Education Officer-cum-the District General Coordinator, Kasturba Gandhi Balika Vidyalaya, Samastipur.
6. The District Programme Officer, Mohiuddin Nagar, District-Samastipur.
7. The Headquarter, Kasturba Gandhi Balika Vidyalaya, Mohiuddin Nagar, District Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mrs .Mahasweta Chatterjee, Advocate
For the U.O.I.	:	Mr. S.D. Sanjay (Addl. S.G.)
		Mr. Kumar Priya Ranjan (C.G.C.)
State Project Council	:	Mr. Girijesh Kumar
For the State of Bihar	:	Mr. A.C. to A.A.G.-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 30-01-2019

The present appeal has been preferred against the judgment and order dated 27.02.2018, passed in C.W.J.C. No. 6306 of 2016 and analogous cases whereby the learned Single Judge has dismissed all the writ petitions by a common order.

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.

4. The learned counsel further pointed out that the “KGBVs” are running under the “Sarva Shiksha Abhiyan” which is the scheme of the Central Government and the State Project Council is only an implementing agency and, therefore, the decisions taken by the State Project Council were clearly illegal. The said decision was put to test in a batch of writ petitions and by a common order dated 27.02.2018, all the writ petitions were dismissed on erroneous considerations.

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, a nullity in the eye of law.

6. Learned counsel for the appellant Perween Kauser urged that Appellant was appointed as part-time teacher with effect from 15.10.2007 and, thereafter, on 01.06.2009, she was made a full-time teacher. However, vide resolution dated 20.12.2013, it was unanimously resolved by the Committee of “KGBV” that the appellant be treated as part-time teacher and in continuance thereof the petitioner was again made a part-time teacher with effect from 28.01.2014 contained in Memo No. 28 issued Co-ordinator, “KGBV” (Annexure-10). A supplementary affidavit has also been



filed by the appellant Perween Kauser through which she has brought on record the scheme of 2009 relating to the “KGBV”.

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.



10. It was further contended that till 2014-15 fund was provided for KGBV teachers and staff in a lump sum manner as given in cost table of the budget with the support from Government of India and under Government of India guidance.

11. However, in the budget of 2015-16, approved by Government of India, provision has been made for only three part-time teachers @ 5000/- per month. Besides, there is another head also for vocational training. A request was made by the State Project Director, BEPC vide letter dated 12.10.2015 from the Government of India for continuation of full-time teachers but no approval had been received till date from their end.

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 Guidelines 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 its altered form even otherwise does not seem to offend either Article 14 or 16 of the Constitution of India.

17. We further find from the supplementary counter affidavit that the writ petitioner, appellant herein, was also allotted another “KGBV” as per letter dated 05.08.2017, but she refused to join at the said place. This factor also disentitled her from seeking any relief before this Court.

18. We also find that the aforesaid decisions to transfer her and post her at another “KGBV” institution is purely in accordance with the policy decision adopted by the Bihar Education Project under the guidelines of the Government of India and, therefore, is wholly legal and valid as the Bihar Education Project is, but, an agent/implementing body of the Government of India.

19. Over and above the aforementioned position, we have also noticed that the order impugned in the writ application by the applicant and other analogous writ petitioners was under challenge and marked Annexure-15 in another writ application bearing C.W.C.J. No. 7625 of 2016 disposed of on 19.07.2016



(Annexure-M) which has been brought on record by the respondent No. 4. The writ application stood dismissed in the following terms :-

“Heard learned senior counsel for the petitioners, counsel for respondent Bihar Education Project as well as counsel for the State.

The issue raised by these 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 of Bihar but is the baby of the Central Government. The funding and parameters are laid down by 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.”



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.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

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CAV DATE	N.A.
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