

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2938 of 2020

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Preetam Kumari Wife of Late Sanjay Sah, Resident of Ward No. 2, Vikash Nagar, Mathurapur, District- Samastipur.

... .. Petitioner/s

Versus

1. The Regional Manager, Union Bank of India , Branch- Samastipur, District- Samastipur.
2. The Director, R- SETI, Ruby Mansion, First Floor, Mohanpur Road, Samsatipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pradeep Kumar Singh
For the Respondent/s : Mr. Anup Sinha

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-07-2022

Heard learned counsel for the petitioner and learned counsel for the respondent-bank.

For tackling the issue of unemployment through various motivational schemes and provide practical orientation to youth towards self-employment, the Rural Self Employment Training Institute (RSETI) was to be established under the Ministry of Rural Development Department, Government of India. The respondent-bank became the sponsor bank for the scheme for establishment of RSETI in district of Samastipur. As per by-laws of RSETI Act, posts are created for running the institutes which include the post of Director, Faculty, Office Assistant and Attendant.



The admitted facts are that the petitioner was selected for the post of faculty on contract basis on 23.09.2013. By virtue of extensions granted thereafter upon completion of 3 years tenure, the petitioner continued, till 23.09.2019, when extension was granted. This extension was up till 22.09.2020. In the midst of this extension, the respondents came out with an advertisement for making selection against posts on contract basis for the RSETI Act on contractual basis. The advertisement is dated 06.09.2019.

The petitioner has approached this Court seeking a direction for extension of her contractual engagement and that the respondents be restrained from making appointment against the posts on contractual basis.

The petitioner's contention is that she has discharged satisfactory work on contractual basis for the last about 6 years and acquired/perfected her skill for the work. The authorities, therefore, could not be permitted to issue advertisement dated 06.09.2019 for appointment on the post being held by the petitioner on contract basis, by another contractual employee.

The process initiated on the basis of advertisement has been completed and in the circumstances, the prayer was amended by filing I.A. No. 1 of 2021.



By I.A. No. 2/2021, there was some correction sought in the description of the parties.

Since both these I.As have been allowed under order dated 01.12.2021 in the instant proceedings.

The substantial prayer today is for quashing of the letter dated 19.02.2020 whereby the petitioner's contractual services have been terminated and for a direction that she be permitted to perform her duties maintaining her contractual existence in terms of the manual on Human Resources Policy for the Outsourced Staff of Rural Employment Training Institutes (RSETIs) issued by the Government of India, Ministry of Rural Development, Department of Rural Development.

The counsel for the respondent-bank relying on the same policy decision, has tried to sustain the order of termination. He has referred to Annexure-E to the counter-affidavit and some other communications which have been placed on record to submit that the action has been taken to ensure enforcement of the approved HR Policy for recruitment of staff which was binding upon the bank as also the petitioner. He has also submitted that under the policy as well as the order engaging the petitioner on contractual basis, there is clear stipulation that the contractual engagement is liable to be brought to an end by



giving one month's notice or pay in view thereof. The petitioner has also participated in the subsequent selection process impugned in the instant writ proceedings and, therefore, she is estopped for assailing the same.

On consideration of the rival submissions, this Court would find that under the HR Policy, on which the bank's counsel has placed reliance, it has not been pointed out that there is any provision which mandates removal of existing contractual employees for bringing in another set of contractual employees, that also when there is no allegation of any kind of deficiency in the services discharged by the petitioner. On the contrary, she has been continued by successive renewals of her contractual appointment up till 2019 and the last contractual period was discontinued only when the impugned order terminating her was issued. Reference to petitioner's participation in the subsequent selection process is of no avail.

The facts are glaring that immediately after issuance of the advertisement dated 06.09.2019, the petitioner had approached this Court assailing the advertisement on the ground that by the same new set of contractual faculties was sought to be appointed by removing the petitioner who has been working as a contractual faculty since the last 6 years.



The other submission of the bank counsel that under the policy decision, the requisite age for contractual engagement between 22 and 40 years, is also baseless and unsustainable for two reasons. Firstly, the petitioner is not claiming recruitment under the policy afresh, her claim is that she should be allowed to continue in her contractual engagement in terms of the policy. Secondly, the petitioner's counsel has rightly pointed out that in the advertisement which has been issued, the authorities have only specified the minimum age 22 years, whereas there is no prescription for maximum age.

The fact that there is no restriction for maximum age in the advertisement; and whether on such plea, the petitioner's recruitment under the policy can be denied, is an issue which could have been considered as relevant, had the petitioner been claiming appointment afresh. In the instant case, the issue is not relevant because petitioner is not claiming any fresh contractual appointment; rather he is seeking continuance of contractual appointment.

From the bare perusal of the policy, it is apparent that in fact the same contemplates that if a faculty has continued for consecutive terms then the faculty is entitled to be designated as senior faculty for the next contract of 3 years.



Specific provision regarding renewal and up-gradation is to be found in Clause 10 of the policy document and being reproduced here, which reads as follows:-

“10. Career Planning

*(a) If a faculty member has been performing very well and the contract has been renewed for consecutive terms, s/he may be designated as **Senior Faculty** for the next contract of three years.”*

The policy in question therefore infact recognises the fact that those like the petitioner who have continued for consecutive tenures, on account of experience acquired are entitled to be designated as Senior Faculty.

The order of termination has been assailed placing reliance on the settled legal position that one set of contractual employees cannot be replaced by another set of contractual employees.

The decision relied upon by the petitioner’s counsel in the case of *Manish Gupta & Anr. v. President, Jan Bhagidari Samiti & Ors.* clearly covers this aspect of the matter. The judgment has been rendered relying upon earlier decision to this fact in the case of *Rattan Lal & Ors. vs. State of Haryana & Ors.* reported in (1985) 4 SCC 43 and *Hargurpratap Singh vs.*



State of Punjab & Ors. reported in **(2007) 13 SCC 292.**

The relevant paragraph of the decision in case of **Manish Gupta** (supra) is paragraph 12, the same reads as follows:-

“12. A perusal of the advertisement dated 24th June, 2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the



*judgment of this Court in the case of **Rattan Lal and others vs. State of Haryana and others** and on the order of this Court in the case of **Hargurpratap Singh vs. State of Punjab and others.**”*

From paragraph 23 of the writ application, it is obvious that there is a post vacant on which the petitioner was performing her duty. Assertion to this effect in para 23 has not been denied or disputed by the counsel for the respondent-bank.

In view of the settled legal position, this Court would consider the petitioner entitled to be continued as a contractual employee on the post of faculty and accordingly direct the authority to take the petitioner’s contractual services back on the post she was working. The impugned termination dated 19.02.2020 issued under the signature of the Deputy Regional Head, Regional Office Samastipur is held to be illegal and quashed.

Writ application is allowed.

(Madhuresh Prasad, J)

SUMIT/Shashank-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.07.2022
Transmission Date	NA

