

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.39 of 2021

1. Rajeev Kumar Son of Shyamanand Thakur Resident of Village and PO- Jahanpur, P.S. Jokihat, District- Araria.
2. Jwala Prasad Ray S/o Lakhandev Ray Resident of Vill and P.O.- Morwa, P.S.- Tajpur, District- Samastipur.
3. MD. Hasibur Rahman S/o MD. Sayeedur Rahman Resident of Vill- Raghobpur, PO- Kumaripur, PS- Mansahh, District- Katihar.
4. Anuj Kumar Singh S/o Nagendra Narayan Singh Resident of Village- Jagdev Nagar Laliyahi, PO and PS- Dahariya, District- Katihar.
5. Jayant Sharan S/o Late Ram Janaki Sharan Resident of Durga Asthan, near Vyapar Mandal, PO and PS- Katihar, District- Katihar.
6. Vijay Kumar Verma S/o Mahesh Nandan Prasad Verma Resident of Navneet Nagar, Baigna, P.O. and P.S.- Katihar, District- Katihar.
7. Sanjay Kumar S/o Boku Yadav Resident of Vill- Nawlakhy, Ward No- 1, P.O. and P.S.- Madhepura, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Secretary, Department of Education, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
4. The Director, Secondary Education, Department of Education, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
5. The District Programme Officer (Secondary Education), Katihar, Katihar.
6. The District Education Officer (Secondary Education), Katihar, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Chakrapani, Madhuresh Singh & Dipak Kumar, Advs.
For the Respondent/s	:	Mrs. Binita Singh, SC XXVIII with Mr. Nishant Kumar Jha, AC to SC XXVIII

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 21-07-2022 Heard the parties.

Both the counsel for the parties agree that the dispute

arising in the present case stand covered by the adjudication made by this Court in C.W.J.C. No. 23 of 2020 (Kaushal Kumar Thakur & Ors. Vrs. the State of Bihar & Ors.), dated 13.04.2022.

In the present case the petitioner has prayed as under :

“(i) Issuance of an order, direction or writ in the nature of Certiorari quashing impugned order issued under memo no. 142 dated 19.09.2020 by which the services of the petitioners as guest teachers has been cancelled with immediate effect as also the very order of initial appointment vide memo no. 109 dated 08.10.2018 has been cancelled.

(ii) Issuance of an order, direction or writ in nature of Mandamus directing the respondents to allow the petitioners to continue on the post held by them after quashing the impugned order dated 19.09.20.

(iv) Issuance of an order, direction or writ in the nature of Mandamus directing the respondents to pay their pending remuneration as also on month of month basis in future as well.

(v) Any other relief or reliefs as the petitioners may be found entitled to in the facts and circumstances of the case.”

The judgment passed by this Court in Kaushal Kumar Thakur (supra) this Court has held as under :

“As regards, the teachers, who have been appointed after 05.08.2018 are concerned, it is

noticed that in few of the Districts the teachers have been allowed to continue, while in some other Districts their services were dispensed with after a period of having works for more than one year.

Their services were required and the very appointment was with the purpose to provide education to the students in a situation where regular appointments could not be made. The power of appointment was given to the District Education Officer. The only objection which has come forth from the Department is of violation of the order passed by the Principal Secretary in not taking prior sanction from him by the District Education Officer. It is not a case where their appointments have been made by a back door entry or without following due process of law. At best the appointment can be said to be irregular and post facto sanction could have been always taken from the Principal Secretary for continuing them. No action has been taken against the District Education Officer.

This Court while passing the interim order in their favour has also observed that principles of natural justice were required to be followed which have admittedly not been followed. The principle of Audi alterem partem has been violated and any action taken contrary to the same taking away a vested right of an employee affecting his lief would have to be treated as void ab initio. Hence, the impugned action is un-sustainable in law.

In view thereof, these writ petitions deserve

to be allowed. The petitioners would be entitled to reinstatement and continuity of service. As interim order has already been passed in their favour, they shall be allowed to continue till regularly selected candidates are made available against the said post.

The interim order passed by this Court is made absolute in the aforesaid terms. All the writ petitions are allowed.”

In the present case also the petitioner has been appointed on 08.10.2018 and, therefore, the termination order passed on the said premise is found to be unjustified, the writ petition deserves to be allowed.

It is accordingly allowed with all consequential benefits as per the direction made in the case of Kaushal Kumar Thakur (supra).

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 2

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