

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1986 of 2021

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Kamlesh Kumar S/o Sitav Ram R/o Village Pratappur,, P.O. Pratappur, P.S.
Dariyapur, Distt.Saran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, State of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Bihar, Patna.
4. The Director, Mass Education, Education Department, Bihar, Patna.
5. The Director (Janshiksha) Education Department, Bihar, Patna.
6. The District Magistrate, Saran.
7. The District Transport Officer, Saran.
8. The District Education Officer, Saran.
9. The District Programme Officer, (Establishment), Saran
10. The District Program Officer, (Literacy), Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC 8

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-02-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) To quash the Memo No. 1715 dated 06.11.2020 issued by the director Jan shiksha Cum Additional Secretary Education Department, Bihar, Patna whereby and where under the appointment of the petitioner has been cancelled on the ground he was not working as a instructor continuously three years on the basis of his payment and also direct the authority to recover the paid salary. A copy of memo dated 06.11.2020 is annexed herewith and marked as Annexure – 1 to this application.



(ii) To further direct the respondent authority not disturb the petitioner in his discharging duty as a Group – D post in Sarvoday High School Bhagwanpur, Dariyapur, Saran.

And or any other appropriate relief(s) to the petitioners for which they may be found entitled under the fact and circumstances of the case.”

3. Petitioner was initially appointed on *ad hoc* basis, thereafter, by virtue of judicial pronouncement cited in Annexure - 10 among others petitioner services were regularized while imposing various conditions. One of the condition is relating to filing of an affidavit that he has worked for continuous three years. The official respondent received complaint against the petitioner stating that petitioner has not fulfilled the relevant condition imposed in the order of regularization to the extent that he has not completed three years of service, therefore, the affidavit filed by the petitioner is contrary to factual aspect of the matter. Thus, respondents have proceeded to cancel the regularization insofar as petitioner is concerned. Hence the present petition.

4. Learned counsel for the petitioner submitted that once the petitioner is regular holder of the post pursuant to Annexure- 10, the respondents cannot cancel the regularization order without providing an opportunity. It is further submitted that such termination or cancellation of regularization is on account of complaint against the petitioner that petitioner has filed false



affidavit. In such an event, domestic enquiry is warranted. On this ground the impugned order is liable to set aside.

5. *Per contra*, learned counsel for the respondents/State resisted the aforesaid contentions of the petitioner and submitted that when the order of regularization itself is clear that such of those regularized persons were required to file an affidavit and filing of an affidavit by the petitioner is contrary to factual aspect, therefore, there is no infirmity in the impugned order.

6. Heard learned counsel for the respective parties.

7. Short question for consideration in the present petition is before order dated 06.11.2020, petitioner is subjected to domestic enquiry or not? Undisputed facts are that petitioner was appointed on *ad hoc* basis and his services were regularized by virtue of judicial pronouncement cited in Annexure - 10. The petitioner was required to comply conditions imposed in Annexure - 10. It is learnt that he has complied in filing affidavit. Some person has given complaint stating that petitioner has filed false affidavit before authorities in respect of regularization. Based on such complaint, the official respondents have proceeded to cancel the order of regularization/appointment. The impugned action dated 06.11.2020 is without holding of domestic enquiry. It is to be noted that once the order of regularization is passed in favour of



the petitioner even though with a certain condition even then petitioner is entitled to participate in the domestic enquiry for the reasons that there were serious allegations levelled against the petitioner that he had filed false affidavit in order to get his service regularized. The Apex Court time and again held that even temporary employees are entitled for domestic enquiry if the allegations are made against such temporary employee before terminating his/her service. In view of these facts and circumstances impugned order dated 06.11.2020 stands set aside.

8. Writ petition is allowed.

9. Petitioner is entitled to monetary benefits during the intervening period from the date of termination till reinstatement. The same shall be calculated and disbursed within three months. The concerned official respondent is at liberty to initiate enquiry against the petitioner for furnishing false information in contrary to Annexure - 10 within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	25.02.2022
Transmission Date	

