

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3357 of 2021

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1. Anjana Kumari, Wife of Prabhakar Kumar, Resident of Village-Kajibigha, P.S.-Kajibigha, District-Nawada.
 2. Naveen Kumar, Son of Ashok Kumar, Resident of Shri Krishna Nagar, Baribigha, P.S.-Hisua, District-Nawada.
 3. Sant Sudip, Son of Ramdas Prasad, Resident of Village-Dhamoul, P.S.-Pakribarawan, District-Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. The District Education Officer, Sheikhpura.
4. The Headmaster/In-Charge Headmaster, Plus 2 High School, Katari, District-Sheikhpura.
5. The Headmaster/In-Charge Headmaster, Plus 2 High School, Ekadha, District-Sheikhpura.
6. The Headmaster/In-Charge Headmaster, Plus 2 High School, Hathiawan, District-Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar, Adv.
For the Respondent/s : Mr. J.K. Roy 1, SC XIII

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

4 13-10-2022 Mr. J.K. Roy 1, SC XIII, appears for all the respondents.

Both the counsels, the petitioners as well for respondents, are ad adum with the issue involved in the present writ petition stands finally adjudicated by this Court in bunch of writ petitions decided on 13.04.2022 with the lead case of C.W.J.C. No. 23 of 2020 (Kaushal Kishor Thakur & Ors. Vrs. the

State of Bihar & Ors.).

The petitioners were appointed after 05.08.2018, with regard to such teachers this Court has observed 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 view of above observations, the present writ petition is allowed.

The petitioners would be entitled to reinstatement and continuity of service, since there was no interim order passed in their favour, the petitioners would not be entitled salary for the interim period on principles of no work no pay. However, continuity of service shall be considered for all intents and purposes.

The writ petition is allowed with the aforesaid observations. No costs.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 2

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