

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18463 of 2018

Chanda, Wife of Ratnendra Kumar, Resident of Village- Murliganj, Ward No. 7, Post Office and Police Station- Murliganj, District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Education Department, Bihar, Patna.
2. The State Project Director, State Education Project Council, (State Level Office), Shiksha Bhawan, Rastrabhasha Parishad Campus, Saidpur Rajendra Nagar, Patna-800004.
3. The District Magistrate, Madhepura.
4. The District Education Officer, Primary Education and Sarva Shiksha Abhiyan, Madhepura.
5. The District Programme Officer, Primary Education and Sarva Shiksha Abhiyan, Madhepura.
6. The Block Education Officer-cum-Block Programme Co-ordinator, Murliganj, District- Madhepura.
7. The Controller, Kasturva Gandhi Girls School, Murliganj, District- Madhepura.
8. The Principal, Kasturva Gandhi Girls School, Murliganj, District- Madhepura.
9. The Warden, Kasturva Gandhi Girls School, Murliganj, District- Madhepura.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Uday Chand Prasad, Advocate
For the State	:	Mr. Apurva Kumar, AC to GA-12
For the Resp Nos. 2 & 5	:	Mr. Girjesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 21-07-2023

This writ application has been filed for the following reliefs:-

“(i) For issuance of an appropriate writ in the nature of Certiorari for quashing the Office Order dated 27.06.2018 issued by Respondent No. 2 whereby the request of the petitioner for extending the time for acquiring graduation degree and for reinstatement in service on the post of Teacher at Kasturba Gandhi Balika School, Murliganj has been rejected.



(ii) For quashing of Office Order dated 22.01.2016 issued by Respondent No. 5 whereby the petitioner has been terminated from the post of Teacher posted at Kasturba Gandhi Balika School, Murliganj due to not passing Graduation examination till 31.12.2015.
(iii) For issuance of writ in the nature of Mandamus direction to Respondents to reinstate the petitioner on the post of Teacher at Kasturba Gandhi Girls School, Murliganj, District-Madhepura with all consequential benefits.”

Brief Facts of the Case

2. In the year 2007, the Bihar Education Project Council, Madhepura (hereinafter referred to as the ‘B.E.P.C.’) came out with an advertisement for appointment of teacher (full-time) for one year. The petitioner participated in the selection process and was appointed on the post of Teacher (full-time) vide Memo No. 417-9 dated 09.09.2009 issued by the Block Education Extension Officer-cum-Block Programme Co-ordinator, Murliganj (Annexure ‘1’ to the writ application). She joined in Kasturva Gandhi Balika Vidyalaya, Murliganj (hereinafter referred to as the ‘K.G.B.V.’) and started discharging her duties as a Teacher.

3. It is the case of the petitioner that by Letter dated 09.02.2010, she was absorbed in service on regular basis in the light of the Letter dated 21.01.2010 of State Project Director, Patna and Letter dated 06.02.2010 of the District Programme Co-ordinator, Madhepura. The copy of the letter of the District Programme Co-ordinator, Madhepura has not been brought on the record to substantiate the claim.

4. It is stated that the State Executive Committee of the B.E.P.C. in its meeting held on 15.02.2012 (67th Meeting) decided the minimum educational qualification of a full-time Teacher and a Warden as graduation and those teachers who had passed Intermediate examination were given



opportunity to obtain graduation by the year 2014. Since the petitioner was also an Intermediate so she was required to abide by this direction.

5. It is stated that the petitioner was directed vide Letter dated 04.01.2016 (Annexure '7') to produce her graduation certificate which she was obliged to produce by 31.12.2015, failing which steps towards her discharge would be taken.

6. The petitioner made representation vide Letter dated 12.01.2016 (Annexure '8' to the writ application) wherein she informed the District Programme Officer, Primary Education and Sarva Shiksha Abhiyan, Madhepura that she had already participated in Part-III examination in the month of November, 2015 and her result is likely to be published in the month of February, 2016, therefore, she should be given an opportunity to produce her certificate on publication of result.

7. The representation of the petitioner was, however, not considered and she was discharged from her duties vide Memo No. KGBV/71/15-16/143 dated 22.01.2016 (Annexure '9' to the writ application). Along with the petitioner, another full-time Teacher, namely, Pooja Kumari was also discharged from the said post.

8. Learned counsel for the petitioner submits that the petitioner had been inducted as Teacher (full-time) after following the established procedure of law. Immediately after the decision was taken by the State Level Committee laying down the minimum educational qualification of graduation, the petitioner took steps to complete her graduation and she had passed Part-I and Part-II examinations. She had also appeared in Part-III examination in November, 2015 but for the reasons beyond her control, the result was not published by the University by 31.12.2015, therefore, there was no fault on



the part of the petitioner. Her discharge from duty only for the reason that she could not produce her certificate by 31.12.2015 is not just and proper and it is an unreasonable approach on the part of the respondents. As soon as the petitioner got her certificate, she submitted a representation along with the final marksheet of the graduation issued by the authorities concerned and requested them to allow her to work as Teacher but that has not been considered.

9. It is submitted that the petitioner had earlier moved this Court in CWJC No. 5594 of 2016 which was heard and disposed of by a learned Co-ordinate Bench of this Court vide order dated 18.05.2018 with a direction to the Project Director to consider and dispose of her representation expeditiously within a period of two months from the date of filing of the representation. Copy of the order has been placed on record vide Annexure '14' to the writ application. It is submitted that the petitioner filed her representation in terms of the liberty granted to her by this Court but the same was rejected by the State Project Officer by the impugned order contained in Memo No. 3641 dated 05.06.2018. Copy of which has been forwarded to the petitioner on 27.06.2018 (Annexure '16' to the writ application).

Stand of the Respondent Nos. 2 & 5

10. Mr. Girijesh Kumar, learned counsel for the respondent nos. 2 and 5 has contested the submissions of learned counsel for the petitioner. It is submitted that the petitioner was engaged on contract basis for a specific period as full-time Teacher in K.G.B.V. on the basis of her Intermediate qualification as per the prevalent rule of engagement. It is stated that vide Letter No. 4876 dated 09.09.2008, qualification of K.G.B.V. Teachers was fixed as graduate trained and the working teachers were asked to raise the



qualification to graduate trained by cut-off date 31.12.2010. Later, it was extended from time to time and lastly, it was extended to 31.12.2015 by Letter No. 6664 dated 29.09.2014. It is submitted that the petitioner failed to produce her graduation certificate by the cut-off date, hence, she has been rightly discharged.

11. Learned counsel submits that the petitioner was not holding a civil post under the State. It is not a case of termination from a civil post or termination of a contract rather it is a case of non-renewal of the contract. It is one of his submissions that a writ petition under Article 226 of the Constitution of India would not be entertainable in such case of non-renewal and remedy would lie under common law. Instances have been given to the order passed by this Court in the case of Kusum Kumari versus State of Bihar and Others in CWJC No. 14600 of 2010 and the order passed in CWJC No. 9810 of 2010 and some other cases. Copies of which have been enclosed as Annexures to the counter affidavit.

12. Learned counsel submits that during the pendency of the writ application, a policy decision has been taken by the State Government which has been communicated vide Memo No. 835 dated 16.02.2016 by the Director State Project Council, Bihar, Patna to all teachers in K.G.B.V. under this policy, those 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. According to this policy, prior to their extension of the contract, a consent for working as 'part-time' Teacher was to be taken. It is further stated that in view of the policy decision, the post of full-time Teachers is now known as part-time Teachers and after completion of the present contract period of full-time Teachers, the post of



full-time Teachers stood abolished. It is submitted that the State Project Council is only an implementing agency and the K.G.B.V. are running under the Sarva Shiksha Abhiyan which is a scheme of the Central Government. It is further stated that a challenge to the said policy decision in CWJC No. 6306 of 2016 failed and a Letters Patent Appeal filed against the order of the learned Writ Court giving rise to LPA No. 414 of 2018 was also dismissed by the Hon'ble Division Bench vide judgment dated 30.01.2019.

13. Learned counsel lastly submits that along with this petitioner Pooja Kumari, full-time Teacher of K.G.B.V., Chausa was also discharged from her service for the same reason. Identically situated Pooja Kumari moved this Court in CWJC No. 10613 of 2017 which was dismissed on 20.03.2023.

Consideration

14. Having regard to the above-mentioned facts and circumstances as also the materials available on the record which have been taken note of by this Court hereinabove, this Court finds that admittedly the petitioner was engaged as full-time Teacher on contract basis. Her contract was being extended and she was given an opportunity to produce her graduation certificate by 31.12.2015 which she failed to do. No doubt, she had appeared in Part-III examination prior to 31.12.2015 but the fact remains that she had enough opportunity since the year 2008 when the policy decision came, to obtain her graduation but she was waiting till last moment and ultimately, she failed to produce the certificate. Immediately, after her engagement as full-time Teacher, a policy decision has been taken whereunder the post of full-time Teacher in K.G.B.V. has been declared as dying cadre, thus, those who have given their consent have been absorbed as



part-time Teacher only. The case of identically situated full-time Teacher, namely, Pooja Kumari was considered by a learned Co-ordinate Bench of this Court in CWJC No. 10613 of 2017 and the same has been dismissed vide order dated 20.03.2023.

15. In the facts and circumstances of the case, this Court finds no reason to interfere with the impugned order.

16. This writ application is dismissed but without cost.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	13.07.2023
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